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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1893.

No. 1168.

JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, AND C. A. CULBERSON, APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY, TRUSTEE, AND THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TEXAS.

FILED MARCH 31, 1894.

(15,552.)

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INDEX.

	Original.	Print.
Caption	a	1
Bill of complaint	1	1
Exhibit "A"—Mortgage	33	24
"C"—Tariffs and circulars of railroad commission (omitted in printing)	59	—
"C," part III—Tariffs and circulars of railroad commission (omitted in printing)	201	—
Answer of the railroad company	218	30
Order granting leave to file cross-bill	222	41
Cross-bill of railroad company	223	41
Amendment to bill of complaint	242	53
Amendment to cross-bill	246	57
Motion of defendants to withdraw answer and file demurrer	251	60
Order granting leave to withdraw answer and file demurrer	252	61
Rule setting down cause on bill and answer	256	63

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 6, 1894.

	Original.	Print.
Defendants' demurrer to bill of complaint	257	63
Defendants' demurrer to cross-bill	262	66
Rule filing amended bill of complaint (omitted in printing)	265	—
Rule filing amended cross-bill (omitted in printing)	266	—
Rule filing demurrer to cross-bill (omitted in printing)	267	—
Rule filing demurrer to bill of complaint (omitted in printing)	268	—
Rule setting down demurrer to bill of complaint for argument	269	68
Rule setting down demurrer to cross-bill for argument	270	68
Rule on defendants declining to further answer bill and cross-bill and submitting cause for final decree	271	68
Final decree	272	69
Opinion (omitted in printing)	277	—
Assignments of error	302	72
Application for appeal and order granting same	303	73
Bond on appeal	304	74
Citation to the Mercantile Trust Co. and service of same (omitted in printing)	305	—
Citation to Gilbert, Perkins & Gilbert and service of same (omitted in printing)	306	—
Certificate (omitted in printing)	307	—
Stipulation to omit parts of record in printing	308	75
Exhibit H—Annual report for year 1891 (parts omitted in printing)	310	76
I—Annual report for year 1892 (parts omitted in printing)	311	102

a Be it remembered that there was opened and begun to be holden a regular term of the United States circuit court of fifth circuit and western district of Texas, at the city of Austin, in said circuit and district, on the 6th day of February, 1893, it being the first Monday in February and the day fixed by law for commencing a regular term of said court at said place—present, the Hon. Andrew P. McCormick, one of the circuit judges of the United States for the fifth circuit; A. J. Evans, United States attorney for said district; Paul Fricke, United States marshal for said district, and B. G. Duval, clerk of said court—when and where the following proceedings were had, to wit:

In the Circuit Court of the United States for the Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 188.

1 No. 188. Equity.

In the United States Circuit Court for the Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 188.

Bill of Complaint.

Farrar, Jonas & Kruttschnitt, 33 Carondelet street, New Orleans, La.; Alexander & Green, 120 Broadway, New York city, and West & McGown, Austin, Texas, complainant's solicitors.
John F. Dillon, John J. McCook, E. B. Kruttschnitt, of counsel.

Filed Ap'l 30, '92.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

1½ To the judges of the circuit court of the United States for the western district of Texas, in the fifth circuit, sitting in equity:

The Mercantile Trust Company, a corporation organized and existing under the laws of the State of New York, brings this, its bill of complaint, against the St. Louis Southwestern Railway Company of Texas, a corporation organized and existing under the laws of the State of Texas, and a citizen and resident of said State; John

H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, constituting the railroad commission of Texas, organized under an act of the legislature of the State of Texas, approved April 3, 1891, and Charles A. Culberson, a citizen and resident of the State of Texas, and attorney general of said State.

And thereupon humbly complaining, your orator, The Mercantile Trust Company, shows your honors as follows:

First. Your orator is a corporation organized and existing under the laws of the State of New York, and a citizen and a resident of said State; that the defendant, The St. Louis Southwestern Railway Company of Texas, is a corporation organized and existing under the laws of the State of Texas, and is a citizen and resident of said State; that the defendants, John H. Reagan, William P. McLean and L. L. Foster are citizens and residents of the State of Texas, and constitute the railroad commission of Texas, and they derive any and all power, authority and character as such commission, and in respect to the matters hereinafter complained of, from and under an act of the legislature of the State of Texas, approved April 3, 1891, entitled "An act to establish a railroad commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented, and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the commission and the railroads, and afford railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act, and to provide means
2 and rules for its enforcement." A copy of said act, marked "Exhibit B," is filed herewith as part hereof.

That said act fixes and establishes the office of said railroad commission of Texas, at the city of Austin, in the county of Travis, in said State of Texas; and said commission, and said Reagan, McLean and Foster as such commissioners, are residents and inhabitants of said Travis county and of the western district of said State of Texas.

That the defendant, Charles A. Culberson, is a citizen and resident of the State of Texas, and of the said city of Austin and county of Travis in said State, and an inhabitant of the western district, and is the attorney general of said State, and claims as such attorney general the right to exercise the powers and to perform the duties purporting to be conferred and imposed upon the attorney general of said State by said act of the legislature of Texas last hereinabove referred to.

Second. That the defendant, The St. Louis Southwestern Railway Company of Texas, owns and operates a line of railroad and property within the State of Texas, particularly described as follows: The main line beginning in the city of Texarkana, Texas, at the State line between the States of Arkansas and Texas, extending thence, in a westwardly and southwestwardly direction, through the counties of Bowie, Morris, Cass, Titus, Camp, Upshur, Smith, Henderson, Navarro, Hill, Limestone, McLennan and Coryell, to the town of Gatesville in said last-named county, a distance of about

305.7 miles, and also an extension or branch line of said railway from Mount Pleasant, Titus county, Texas, westwardly and northwestwardly through the counties of Titus, Franklin, Hopkins, Hunt, Fannin and Grayson, to the town of Sherman, in said last-named county, a distance of about 115 miles; also an extension or branch line extending from Commerce, a point on said last-named branch, or extension, in the county of Hunt, thence southwestwardly, through the counties of Hunt, Collins, Dallas and Tarrant, to the city of Fort Worth, a distance of about 106.8 miles; also a branch line or extension, from a point on the main line at
3 Corsicana, in the county of Navarro, thence westwardly, through the counties of Navarro and Hill, to Hillsboro, in said last-named county, a distance of about forty-five miles. The total miles of main line and branch lines or extensions being about 572.5 miles; together with all of the franchises, property and appurtenances thereof, connected therewith, or thereto appertaining, as described in the second mortgage of the said railway company, hereinafter referred to, copy whereof is attached hereto as Exhibit "A."

Third. That under and in pursuance of the powers conferred upon said defendant railway company by its charter and the laws of the State of Texas, and pursuant to due corporate action the said defendant railway company did, on or about the 13th day of January, 1891, make, execute and deliver, for value, to your orator, and your orator now owns and holds in trust its four (4) per cent. second-mortgage income bond dated on the said 13th day of January, 1891, for the sum of four million seven hundred and twenty-two thousand five hundred dollars ($4,722,500), payable to the Mercantile Trust Company or bearer, or, if registered, to the registered holder thereof, on the first day of November, 1989, in gold coin of the United States, at the office of the said trust company in the city of New York, with interest on said principal sum from the first day of January, 1891, at such rate not exceeding four per cent. per annum, payable in like gold coin, as the net earnings of the railway property and business of the railway company should suffice to pay, as the same might be determined and ascertained by the board of directors of the said railway company in the manner provided in said bond and in the mortgage hereinafter mentioned.

And for the purpose of securing said bond, said railway company, pursuant to, and in accordance with like charter and corporate authority, made, executed and delivered to your orator its indenture of mortgage, or deed of trust, known as its second mortgage, conveying to your orator, in trust, for the security of the holder of said bond, all of the lines of railroad, property, appurtenances and franchises hereinbefore referred to, together with all the rents,
4 tolls, earnings, incomes, issues and profits thereof, all of which are more specifically described in said mortgage, a copy whereof, including copy of said bond, is filed herewith as aforesaid, marked Exhibit "A."

Fourth. That the obligation of the defendant railway company

to pay the interest upon the bond made to your orator as aforesaid, and secured by said mortgage to your orator, and the lien of said last-mentioned mortgage, are subordinate and inferior to the obligation of the said railway company to pay the interest at 4 per cent. per annum upon its indebtedness upon a certain outstanding 4 per cent. first-mortgage gold bond in the principal sum of nine million four hundred and forty-five thousand dollars ($9,445,000), secured by its certain indenture of mortgage, or deed of trust, dated January 13, 1891, and executed to the Central Trust Company of New York, as trustee, to secure said 4 per cent. first-mortgage gold bond, and also are subject to all obligations and liens for, in respect to, and upon the cars and equipment of the said railway company under car trust or other charges prior to the mortgage securing said second-mortgage income bond.

Your orator prays leave upon the hearing herein to refer to said first mortgage of the defendant railway company, and to such car-trust agreements as affect or charge the equipment of the said railway company in the manner set forth in said second mortgage.

Fifth. Your orator further says that the twenty-second legislature of the State of Texas passed an act entitled "An act to establish a railroad commission for the State of Texas, whereby discrimination and extortion in railroad charges may be prevented and reasonable freight and passenger tariffs may be established; to prescribe and authorize the making of rules and regulations to govern the commission and the railroads and afford railroad companies and other parties adequate remedies; to prescribe penalties for the violation of this act and to provide means and rules for its enforcement," which said act was approved April the 3d, 1891, from which date it took effect. A copy of said act of the legislature of the State of Texas last mentioned, marked "Exhibit B," is herewith filed as part hereof.

That the said act was passed and adopted by said legislature in
5 claimed pursuance of the powers conferred upon said legislature by an amendment to the present constitution of the State of Texas, which amendment was adopted at an election held throughout said State on the 5th day of November, 1890, and said amendment is as follows:

Article 2. Railroads heretofore constructed or which may hereafter be constructed in this State are hereby declared public highways and railroad companies common carriers. The legislature shall pass laws to regulate railroad freight and passenger tariffs, to correct abuses, prevent unjust discrimination and extortion in the rates of freight and passenger tariffs on the different railroads in this State, and enforce the same by adequate penalties; and to the further accomplishment of these objects and purposes may provide and establish all requisite means and agencies, invested with such powers as may be deemed adequate and advisable.

That the said Reagan, McLean and Foster were appointed and qualified as such commissioners in the manner prescribed by section 1 of said act and organized said commission on the 10th day of June, 1891, from which date they have assumed to be

and act as the railroad commission of Texas, and are exercising and claiming the right to exercise the power and functions conferred, or purporting to be conferred, by said act upon said railroad commission. That said act purports to confer the power and authority upon said railroad commission of Texas and make it the duty of the commission, among other things, to adopt all necessary rates, charges and regulations to govern and regulate railroad freight and passenger tariffs, the power to correct abuses and prevent unjust discrimination and extortion in the rates of freight and passenger tariffs upon the railroads in said State, and to enforce the same by having penalties inflicted, as by said act prescribed, through the proper courts having jurisdiction. To fairly and justly classify and subdivide all freight and property, of whatsoever character that may be transported over the railroads in said State into such general and special classes or subdivisions as may be found necessary and expedient. To fix to each class or subdivision of freight a reasonable rate for each railroad, subject to said act, for the
6 transportation of each of said classes and subdivisions. To fix different rates for different railroads, and for different lines under the same management, or for different parts of the same line, if found necessary to do justice. To fix and establish for all or any connecting lines of railroad in said State reasonable joint rates or freight charges for the various classes of freight and cars that may pass over two or more lines of such railroad; and if any two or more connecting railroads shall fail to agree upon a fair and just division of the charges arising through the transportation of freight, passengers or cars over their lines, the commission is required by said act to fix the *pro rata* part of such charges to be received by each of said connecting lines.

Said act also provides in effect that until the commission shall make the classifications and schedules of rates therein provided for, and afterwards if they deem it advisable, they may make partial or special classifications for all or any of the railroads subject to said act, and fix rates to be charged by such roads therefor, and such classification and rates shall be put in effect in the manner provided for general classifications and schedules of rates. And the said act provides that the said commission shall have power, and it shall be its duty from time to time, to alter, change, amend or abolish any classification or rate established by it when deemed necessary, and such amended, altered or new classification or rates shall be put into effect in the same manner as the original. And the said commission is authorized by said act to adopt and enforce such rules, regulations and modes of procedure as it may deem proper, and to hear and determine complaints that may be made against the classification, or the rates, rules, regulations and determinations of the commission.

Said act also purports and attempts to confer upon the commission the power to make reasonable and just rates and charges for each railroad subject to said act for the use or transportation of loaded or empty cars on its road, and to establish for each railroad, or for all railroads, the like reasonable rates for the storing and hand-

ling of freight and for the use of cars not unloaded at forty-eight
7 hours' notice to the consignee, not to include Sundays. And the said act also purports to confer upon the commission the power, and to make it the duty of said commission, to establish reasonable rates for the transportation of passengers over each or all of the railroads subject thereto, not to exceed the rates fixed by law, and also to prescribe reasonable rates, tolls or charges for all other services performed by any railroad subject thereto.

Said act, in effect, provides (section 4) that, before any rates shall be established under said act, the commission shall give the railroad company to be affected thereby ten days' notice of the time and place when and where the rates shall be fixed, and the said railroad company shall be entitled to be heard at such time and place, to the end that justice may be done, and that it shall have process to enforce the attendance of the witnesses, which process shall be served as in civil cases.

Sections 5, 6 and 7 of said act are as follows:

"SEC. 5. In all actions between private parties and railway companies brought under this law, the rates, charges, orders, rules, regulations and classifications prescribed by said commission before the institution of said action shall be held to be conclusive, and deemed and accepted as reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 thereof.

"SEC. 6. If any railroad or other party at interest be dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, such dissatisfied company or party may file a petition setting forth the particular cause or causes of objection to such decision, act, rate, rule, charge, classification, or order, or to either or all of them, in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant. Said action shall have precedence over all other causes on the docket of a different nature, and shall be tried and determined as other civil causes in said court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court at either of its terms, and such
action so appealed shall have precedence in said appellate
8 court of all causes of a different character therein pending: Provided, that if the court be in session at the time such right of action accrues, the suit may be filed during such term and stand ready for trial after ten days' notice.

"SEC. 7. In all trials under the foregoing section the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts, or charges complained of are unreasonable and unjust to it or them."

By section 8 of said act it is made the duty of the said commission as soon as the classification and schedule of rates provided for in said act are prepared by them, to furnish each railroad subject

to the provisions of said act with a complete schedule in suitable form showing the classification of freight made by them and the rates fixed by said commission to be charged by such roads for the transportation of each class of freight and cause a certified copy of such classification and schedule of rates to be delivered to each of said railroads, at its principal office in said State, if it has such office in said State, and if not, then to any agent of said company, which said schedule, rules and regulations shall take effect at the date which may be fixed by said commission not less than twenty days; and it is by said act made the duty of said railroad company to cause said schedules to be printed in type of a size not less than pica, and to have the same posted in a conspicuous place at each of its depots so as to be inspected by the public. And the said commission by said act are empowered to at any time abolish, alter or in any manner amend the said schedules, or abolish or amend any such regulations; and, in that event, certified copies of the schedules, rules or regulations showing the change therein shall be delivered to each road as therein specified.

Neither said act nor any other law of the State of Texas requires said commission to publish schedules and rates specified in said act before the taking effect of the same, or to do any other act or thing in respect thereto, except as required by section 8 of said act hereinbefore recited.

It is provided in section 14 of said act, in effect, that if any railroad company subject to said act, or its agent or officer, shall
9 thereafter charge, collect, demand or receive from any person, company, firm or corporation, a greater rate charged for compensation than that fixed and established by the railroad commission for the transportation of freight, passengers or cars or for the use of any car on the line of its railroad, or any line operated by it, or for receiving, forwarding, handling or storing any such freight or cars for any other service performed or to be performed by it, such railroad company and its agent or officer shall be deemed guilty of extortion, and shall forfeit and pay to the State of Texas a sum not less than $100 nor more than $5,000.

By section 17 of said act, it is provided in effect that in case any railroad subject to said act shall do or cause to be done, or permit to be done any matter, act or thing in said act prohibited or declared to be unlawful, or shall omit to do any act, matter or thing therein required to be done by it, such railroad shall be liable to the person or persons, firm or corporation injured thereby, for the damages sustained in consequence of such violation; and in case said railroad company shall be guilty of extortion or discrimination, as by said act defined, then in addition to such damages such railroad shall pay to the persons, firm or corporation injured thereby a penalty of not less than $125 nor more than $500, to be recovered in any court of competent jurisdiction in any county into or through which any railroad may run, provided that such road may show and prove, as a defense to the action for such penalty, that such violation was unintentional and innocently made through mistake of fact; and provided further, that such recovery as therein pro-

vided shall in no manner affect a recovery by the State of the penalty denounced for such violation.

By section 18 of said act it is in effect provided that if any railroad as aforesaid, shall wilfully fail in either provisions of said act, or shall do any act therein prohibited, or shall fail or refuse to do any other duty enjoined upon it for which a penalty has not therein been provided for such act or violation, it shall pay to the State of Texas a penalty of not more than $5,000.

By section 19 of such act it is provided in effect that all of
10 the penalties therein provided, except as in section 17, shall be recovered and suits thereon shall be brought in the name of the State of Texas in the proper court having jurisdiction thereof in Travis county, or in any county from or through which such railroad may run, by the attorney general or under his direction.

By section 20 of said act it is provided in effect that on the application of any person, organization or firm, the commissioners shall furnish certified copies of any classifications, rates, rules, regulations or orders, and such certified copies or printed copies published by authority of the commission, shall be admissible in evidence in any suit and sufficient to establish the fact that any charge, rate, rule, order or classification therein contained, and which may be in issue in the trial, is the official act of the commission.

Sixth. Your orator further avers upon information and belief that on or about the 21st day of June, 1891, the general freight agent of the defendant railway company, received, through the United States mail, a communication dated June 20, 1891, a copy whereof is as follows:

Office of railroad commission of Texas.

AUSTIN, TEX., *June* 20, 1891.

General freight agent St. L. S. W.

DEAR SIR: In accordance with the requirements of section four of the act creating the railroad commission of Texas, passed at the regular session of the twenty-second legislature, approved April 3, 1891, the railroad commission of Texas will, on Monday, July 6, 1891, begin and continue from day to day, until completed, the classification and subdivision of all freight and property of whatsoever character that may be transported over the railroads of this State, into such general or special classes or subdivisions as may be found necessary or expedient, and the fixing for each class or subdivision of freight a reasonable rate for each railroad, subject to this act, for the transportation of each said subdivisions or classes; also that at the above-named time and place a special classification and rates of charges thereon, of cotton, grain, lumber and salt will be made. Your attention is also called to section eight of the act aforesaid, which provides that, in all cases where the rates shall not have been
fixed by the commission, no changes shall be made, except
11 after ten days' notice to and consent of commission. Therefore, the changing of any rates in force July 10, 1891, except

after notice as above provided and the consent of the commission, is unlawful.

Please acknowledge the receipt of this notice, and oblige.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

Although said communication did not inform said defendant railway company or its agents of the rates, or the changes in the then existing rates, which said commission proposed or intended to make at said time, still, as your orator is informed and believes, said general freight agent and other representatives of said railway company appeared before said commission at its office in the city of Austin at the time in said notice named, and requested said commission to indicate the rates they proposed to fix, and the changes they proposed to make in the then existing rates, for the transportation of property by said railway company, in order that the railway company should have the opportunity then to present any evidence it might be able to produce, appropriate and material to the action which the commission proposed or intended to take in the premises; which request the commission failed and refused to grant. That the agents and representatives of the railway company were therefore unable to produce testimony, appropriate or material, to any possible action of the commission, but the agents or representatives of said company at said time did present such information, of a general character, to said commission, as to them seemed in any way appropriate or material to the matters upon which the commission had indicated its purpose to act, and as far as possible gave all information requested or suggested by said commission as material to such matters.

Shortly thereafter there appeared in the newspapers of the State a statement which, as your orator is advised and believes, was authorized by said commission, to the effect that the commission invited representatives of towns and cities, boards of commerce or individuals who might desire to present any matter or complaint to the said commission to be present on and after July 6, 1891.

12 That said defendant railway company did not, as your orator is informed and believes, in any way waive the giving of any notice required by law, but its representative merely appeared before said railroad commission, as did other citizens and inhabitants of the State who had any concern or interest in the proceedings of the commission.

That, as your orator is informed and believes, the said commission did not, as it had declared its intention in said notice to do, fix said rates or any rates whatever at its said session, or indicate any time when it would fix such rates, but adjourned and deferred action upon the matter stated in said notice indefinitely, and terminated its session without action and without adjournment to any specified day.

That thereafter, and subsequently to July 29, 1891, the general freight agent of the defendant railway company received through the United States mail a communication from the said railroad

commission enclosing a proposed schedule of rates on corn, wheat, rye, barley, oats, bran, mill feed, mill stuff, hay, flour and meal in sacks or barrels, and salt in sacks or barrels, which said proposed schedule was accompanied by the following notice:

Office of railroad commission of Texas.

AUSTIN, TEX., *July* 29, 1891.

DEAR SIR: The schedule of rates on the commodities herein named is proposed by the railroad commission of Texas to the general freight agents of the several railroads in Texas for their consideration and such suggestions as they may see proper to make. Action will be had on this schedule August 5, and all communications relating thereto must be received by that date to receive attention of the commission.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

That thereafter and subsequently to the 30th day of July, 1891, said general freight agent of said defendant railway company received, through the United States mail, communications
13 from said commission, including proposed rates on lumber, shingles and cotton, which communications are respectively as follows:

Office of railroad commission of Texas.

AUSTIN, TEX., *July* 30, 1891.

DEAR SIR: The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they may desire to make must reach this office by August the 7th to receive attention from the commission.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

Office of railroad commission of Texas.

AUSTIN, TEX., *July* 31, 1891.

DEAR SIR: The schedule of rates herein proposed is submitted for the consideration of the general freight agents of the several railroads in Texas. Such suggestions in relation thereto as they desire to make must reach this office by August the 6th, to receive attention by the commission.

JNO. H. REAGAN, *Chairman.*

J. J. ARTHUR, *Secretary.*

That the time within which, by the terms of said notice, communications or objections to such proposed rates upon the part of said railway company, in order to receive consideration by said railroad commission, as appears from the dates and times of the

receipt of the said notices by said general freight agent, — was less than ten days. That, as your orator is informed and believes, said commission were requested to extend for ten days the time for hearing prescribed by said notices, which request was refused by said commission. That although ten days' notice thereof was not given, as required by said act of April 3, 1891, the general freight agent of said railway company appeared before said railroad commission, at its rooms in the capitol at Austin, and statements were produced, verified by affidavit, showing the unjust, unreasonable and illegal character of said proposed rates. That the said commission did not, as indicated in said notices and communications last
14 referred to, fix rates on said articles, or any rates whatever, at the time and places, or at either of the times or places in said notices specified.

That thereafter the general freight agent of the defendant railway company received from the said commission, through the United States mails, the several communications, schedules, copies of commodity tariffs, and circulars, copies of which are filed herewith as part hereof marked "Exhibit C." That said communications, schedules, copies of commodity tariffs, and circulars were severally so received on or about the day following their respective dates.

That in addition to the communications, copies of which are so filed herewith, the general freight agent of the defendant railway company and of other railroad companies of Texas have received frequent informal communications from said commission, or from said Chairman Reagan, relating to the tariffs, orders and action of said commission, and to the duties, liabilities and action of the railroad companies in respect thereto and the said general freight agent of the defendant railway company, and the general freight agent of other Texas railroad companies have addressed and sent to the said commission numerous communications, statements and protests relating to action proposed and taken by said commission in the making and announcement of its various tariffs and orders herein complained of. To all of said communications, statements and protests, your orator prays leave to refer with the same effect as if the same were herein set forth.

The said commission has never served, or caused to be served, on the defendant railway company, any certified copy of its purported tariffs, or either of them, as required by said act of April 3, 1891, the only pretended service being by mailing to the said general freight agent of mimeograph copies of said tariffs, copies of which are filed within and included in said "Exhibit C." Nevertheless, said commission and said defendant Culberson, attorney general, and divers other persons are seeking and attempting to force the said railway company to put and continue the same in effect, and threaten and propose to enforce the same through and
15 by the suits, actions and penalties prescribed by said act of April 3, 1891.

That said railroad commission, without further or other notice, or pretended notice, than those hereinabove set forth, are proposing and threatening and proceeding to make and announce

other and further schedules of rates and tariffs upon other commodities.

That the said schedules and copies of commodity tariffs, filed herewith as aforesaid, are promulgated by said commission and intended by them as schedules of the rates of charges, for the transportation of the articles named therein, over railway of defendant company, which rates and charges said commission assumes to establish and fix under the authority purporting to be conferred upon it as such commission by said act of April 3, 1891. And the said commission threatens and intends, under the penalties of the act, to compel said defendant railway company to adopt the said several schedules as rates of charges to be made by it for the transportation of said articles over its railway, and the said defendant railway company has adopted the same, so far as by the terms thereof they have become effected, and proposes and intends to adopt and, unless restrained by the order of the court, will adopt those still to become effective, as required, or sought to be required by said commission.

Your orator avers, upon information and belief, that none of the rates promulgated or attempted to be promulgated by said commission, and specified in said schedules, were fixed or attempted to be fixed by said commission at any time or place whereof the said defendant railway company had ten days' notice or any specific notice whatever, and that the communications from the said commission, and from its chairman hereinbefore referred to constitute the sole and only notice to said defendant railway company in the premises.

That, as your orator is informed and believes, during the purported hearings before the commission on said proposed tariffs, it was proposed to said commission that if it would grant a reasonable time, estimates would be made showing movements of each of the commodities upon which it was proposed to make tariffs, the
16 rates charged under the then existing tariffs, and the revenues derived therefrom, and showing the revenues which would have been derived if the proposed tariffs of the commission had been applied thereon. Said statement, when furnished to the commission, would not only have shown the effect of said proposed rates, but they could have easily derived therefrom a knowledge and understanding of the effect upon the revenues of the railway companies of any system of rates they might have under consideration. Said offer was declined by said commission, and they proceeded, as aforesaid, to establish and announce said schedules, without having secured any reasonable data, statistics or information to enable them even to approximate with any degree of correctness the effect of any of the rates considered or established by them.

That, as your orator is informed and believes, at the said sessions of said commission no witnesses were sworn and no evidence introduced, and no formal charges preferred against said defendant company, and any and all persons who desired to be present were allowed to participate in the proceedings. That said commission, although it was fully empowered by law so to do, failed and re-

fused to appoint experts, or to adopt any means of investigating the financial condition and the revenues and resources of the said defendant railway company, or any other railway companies of the State, and failed to make any effort whatever to inform themselves as to whether the conditions were such as to authorize them to make reduction in the rates or in the revenues of the railroads in general, or of said defendant railway company in particular; that at the session of said commission, of which the said defendant railway company, or any other railway companies, were informed, or at which they were represented, no evidence whatever was introduced tending to show that the then existing rates of said defendant railway company were too high, or were unjust or exorbitant, or yielded greater revenue than said defendant railway company was entitled to receive. That the said schedules of rates and charges were so established and promulgated by said commission without any evidence whatever having been taken or ad-
17 duced before it, which showed or tended to show that said rates and charges were just, fair or reasonable, and the same were so fixed and established notwithstanding that the uncontradicted showing made by the representatives of the railroad companies before said commission tended to show and did show that such rates and charges would be unjust, unfair and unreasonable.

Seventh. That the classifications and schedules of rates and charges so announced and promulgated in and by said commodity tariffs and circulars of said commission, or sought so to be, as hereinbefore shown, are unfair, unjust and unreasonable, and that the same cannot be adopted or put or continued in effect by the defendant railway company without serious and irreparable loss to it, and serious and irreparable injury to and destruction of the property, rights and interests of your orator and the beneficiaries of its trust as hereinafter more fully set forth; that the rates so charged and announced by said commission are not compensatory and are unreasonably low, and that the adoption and enforcement thereof would result, as nearly as can be estimated, in a diminution of the revenues of said defendant railway company aggregating more than $1,500,000 per annum; and that the revenues of said railway company, so reduced and diminished, would not only be inadequate to provide for the payment of any interest upon the second-mortgage income bond secured by said second mortgage to your orator, as trustee, but would be insufficient and inadequate to provide for the fixed prior obligations of the defendant railway company recited and set forth in the fourth paragraph hereof, or to pay the operating expenses thereof and the expense of maintaining the property in proper order and good working condition, so that the traffic and business of the road and of every part thereof shall at all times be done with safety and expedition.

That the railroad and property of the defendant railway company, upon which your orator has the lien and in which it has the property, rights and interests hereinbefore referred to, have no other or different value or use than as railway property, and as the same

are operated in the carriage of persons and commodities for hire;
18 and that the value of your orator's lien thereon and its property, rights and interests therein is determined and fixed by the productiveness and earning capacity thereof. Your orator avers that if the said rates and charges so promulgated and sought to be enforced by said commission shall be adopted and continued in force by the said defendant railway company, or shall be enforced by any or either of the other defendants hereto, and if the same shall become and remain operative, the result will be a serious and irreparable reduction of the value of the railway and property of the said defendant company, thereby eliminating and destroying the value of your orator's present and future interest therein, and in effect annulling the investment under said second-mortgage income bond; and your orator fears, apprehends and alleges that the value of said property having been thus conclusively fixed and established, and the possibility of any adequate or fair productiveness in the future having been thus concluded, the said railway company will be unable to earn or provide for the interest upon its said prior obligations, and the liens for the security thereof will be enforced by foreclosure; and that upon such foreclosure the said railway and property would not bring, and, by reason of its arbitrarily diminished earning capacity, would not be worth a sum equal to the charges thereon prior to the mortgage indebtedness represented by your orator as trustee. And so your orator shows that the effect and operation of the said railroad commission act, and of the said action of said commissioners in alleged pursuance thereof, threaten to deprive your orator and the beneficiaries of its trust of its and their property, rights and interest; and your orator further avers that it and they would be so deprived of said property, rights and interests without due process of law and in violation of the Constitution and laws of the United States and of the constitution and laws of the State of Texas, as hereinafter more fully alleged and shown.

Your orator further avers, upon information and belief, that the prior mortgage indebtedness hereinbefore recited in paragraph
4 hereof, and the indebtedness to the holders of the bonds
19 secured by the said mortgage to your orator and the stock capitalization of the defendant railway company, represent the actual cost to the said railway company of the construction, acquirement and equipment of its lines of railway and property and the reasonable value thereof, and the capitalization upon which it is entitled to earn, and should pay, full and fair returns by way of interest and dividends. That such returns should be not less than a sum sufficient to provide for the entire interest on its bonded debt, and said railroad commission may not reasonably or lawfully establish rates and charges which will restrict the earnings of said company so that it will be unable to meet these requirements.

Eighth. Your orator avers that each and all of the rates, charges and classifications prescribed by said defendant railway company in force at the time when said commission act was adopted by the legislature of Texas, and when the several tariffs and orders of the commission were promulgated, as hereinbefore stated, were in no

case unreasonably high; that the same were not in restraint of a free movement of all commodities affected thereby; that the same were far less than the rates and charges for like transportation of like articles prior to the construction of the lines of railway of the defendant company, and that the same were not and are not sufficient to enable the said defendant company to pay the interest upon its bonds. Wherefore your orator avers that a reduction of said rates, and the establishment of any reduced rates, are and would be unjust and unreasonable, and in effect a confiscation and appropriation to the use of others of a portion of the capital invested by the beneficiaries of your orator's trust, and by other persons, in the railroad and securities of the defendant company, and a taking of the property of said company, and of your orator, and of the beneficiaries of its trust, without due process of law, and not in due course of law, and without adequate compensation being made, contrary to, and in violation of section 1 of article 14 of the amendments to the Constitution of the United States, and sections 17 and 19 of article 1 of the constitution of the State of Texas of the year 1876.

20 Your orator further avers that its rates, charges and classifications were fixed and established by the defendant company with a careful regard for the financial, commercial and competitive conditions and laws which enter into, affect or control the making and relative adjustment of rates and classifications in the State of Texas, and yet that since the month of June, 1891 (at which time the receivership hereinafter mentioned was discharged and said railway and property were delivered to defendant company), the earnings from said railway and property have, as your orator is informed and believes, only been as stated in the account included in the following paragraph hereof.

Ninth. Your orator avers that the lines of railway and property of the defendant company were, prior to the month of June, 1891, operated, together with the line of railway and property now belonging to the Tyler Southeastern Railway Company, by S. W. Fordyce and A. H. Swanson, receivers, appointed by the circuit court of the United States for the eastern district of Texas, in a certain consolidated cause then pending in said court, wherein The Central Trust Company of New York, and The Mercantile Trust Company, both corporations of the State of New York, were plaintiffs, and The St. Louis, Arkansas & Texas Railway Company in Texas, and The Kansas & Gulf Short Line Railroad Company were defendants; that the lines of railway, property, franchises and chartered rights now belonging to the defendant company were sold under a decree of foreclosure in said last-mentioned cause, and were purchased at said sale by Louis Fitzgerald, purchasing trustee, and were conveyed to him by deed, dated January 9, 1891; and the said railway property, franchises and chartered rights were by said Fitzgerald, purchasing trustee, conveyed and assigned to the defendant company by deed dated January 13, 1891, upon the considerations stated in the second mortgage of the said defendant railway company, copy whereof is attached hereto, and marked Ex-

hibit "A," as aforesaid, and said receivership was discharged in said month of June, 1891, and said railway and property were then delivered to said railway company, and have since been operated by it.

21 Your orator further avers that the following is a condensed statement of the income account of the defendant railway company, covering the earnings and expenses of its said railway and property from June 1 to September 30, 1891:

Exhibit of Income Account, June 1 to September 30, 1891.

Debits.

Operating expenses	$477,980 75
Taxes accrued	13,600 00
Interest on first-mortgage bonds at 4 per cent	125,863 34
Interest and exchange	678 12
Sundry amounts	971 79
Total debits	$619,464 00

Credits.

Gross earnings:	
Freight	$321,637 63
Passenger	108,582 87
Mail	13,332 94
Express	6,515 38
Telegraph	739 81
Miscellaneous	3,949 27
Total earnings and credits	$454,757 90
Deficit	$164,406 10

Your orator avers that the average annual revenue per ton per mile derived from the operation of the railway and property now belonging to the defendant company has, with slight interruption, steadily decreased during the entire period since the construction of the said railway; and your orator avers that any further reduction in the rates for transportation, or in the revenues of said company, or any tariffs or orders of the said railroad commission fixing or establishing the rates in force prior to the organization of said commission, or any lower rates, in such a way that the same may not be advanced by the defendant company as opportunity may be afforded by commercial and competitive conditions and laws, are, and would be, unjust, unfair and unreasonable, and would have the effect of impairing and destroying the property, rights and interest of the said railway company,

22 and of your orator and the beneficiaries of its said trust, to the extent and in the manner hereinbefore and hereinafter stated.

Your orator avers that there will be no compensatory increase in

the business and tonnage of the said defendant railway company resulting from the reduced rates established by said commission or otherwise; and that, as your orator is informed and believes, there will be no appreciable or substantial increase whatever in such business or tonnage.

Tenth. Your orator further alleges that the injurious and destructive effect of the establishment of said unjust and unreasonably low rates, would not be limited to the business of the defendant railway company transacted within the limits of the State of Texas; but said rates would affect the interstate business of the railway company and impair and diminish the revenues derived therefrom. In this behalf your orator avers that all interstate rates, in which the defendant railway company and other railway companies of Texas participate, are based upon the rates prevailing between Galveston and interior points in the State of Texas. That the interstate rates are controlled and determined by water competition; that is, the water rates between foreign or Atlantic seaboard points and Galveston, added to the local rate between Galveston and interior Texas points of origin or destination of shipment, make the rate which the interstate lines are compelled to meet or adopt. So that your orator shows that a corresponding decrease of interstate rates would ensue the reductions of intrastate rates required by the schedules heretofore announced by the commission. These conditions affect substantially all classes of shipments which are handled by the defendant railway company, and your orator is informed and believes, and therefore avers, that serious and irreparable loss of revenues from the interstate business of defendant railway company would be caused by the adoption and enforcement of said schedules.

Eleventh. Your orator further avers that by an order, rule, rate and regulation made and established by said commission on the 6th day of November, 1891, and promulgated, published and desig-
23 nated by it as circular No. 34, a copy whereof is filed herewith as part hereof, included in said Exhibit "C" to this bill, said commission requires and commands, and unless restrained by this court will compel, the defendant railway company, upon the demand of the owner of any freight or property contained in any car owned by said railway company, or in its possession, to surrender and deliver its said car containing said freight or property to any railway company designated by said owner with which the railway of defendant company connects, to be used by such other railway company upon its own lines and its connections in the transportation of said property to any place off the line of defendant company's railway designated by the owner of said freight. That under the terms of said order, rule and rate, the cars of defendant company may be taken from its possession and used as above stated without the consent of the defendant railway company, and without adequate compensation, and without other compensation for the use thereof by such shipper or other railway company while off said defendant company's line and out of its possession than a rental fixed by the said commission during the period of such enforced

bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

That by said order, rate, rule and regulation, said commission also requires and commands, and, unless restrained by this court, will compel the defendant railway company, under pain of the penalties by said act prescribed, upon the tender of any car containing freight or property for transportation, and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation, to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may—under the direction of the owner of the freight therein, or of the said railway company tendering said car—be hauled over the railway of defendant
24 company, as aforesaid, although said defendant company owns and possesses a large number of cars for the transportation of property received by it as a common carrier, and has, except during rare seasons of extraordinary business activity, a sufficient number of idle cars available for such use. After such car has been transported to the point designated by the owner of the freight contained therein, the defendant company is by said order, rate and rule, required to again haul said car over its railway and redeliver it to the company from which it was received without any compensation whatever for such carriage and service.

That said order, rate and rule also requires said railway company to perform any necessary switching service in receiving from or delivering to any connecting railway line any such car without compensation or reward.

That in the respect above recited, the defendant railway company is, and would be by said order, rate and rule, deprived of its property without due process of law, and not in due course of law, contrary to section 1 of article 14 of the amendments of the Constitution of the United States, and of sections 17 and 19 of article 1 of the constitution of the State of Texas.

That the effect and operation, and as your orator is informed and verily believes, the purpose of said order, rate and regulation, is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by permitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as point of temporary destination, and the shipment rebilled from the latter point to its actual and final destination; the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said commission and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this respect, your orator shows that said order, rate and
25 rule, so announced and published as said circular No. 34, and said act of the legislature of the State of Texas purporting to confer upon said railroad commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void because in conflict with and in violation of section 8 of article 1 of the Constitution of the United States, and an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the amendments thereto.

Twelfth. Your orator further shows that in section 5 of said act of the legislature of Texas, establishing the said railroad commission, it is provided that in actions between private parties and railway companies, brought under said law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 of said act. So that your orator alleges that unless the relief herein sought be granted, the failure of the defendant railway company to adopt and put into effect and use the unreasonably low and uncompensatory rates heretofore prescribed by said commission would subject it to a multiplicity of suits brought by shippers for the penalties provided in section 17 of said act; and that in such action the said railway company would be deprived of the lawful defense that the rates and charges so prescribed by said commission were and are unreasonable; and the said railway company, so concluded and deprived of lawful defense, would be subjected to innumerable penalties, ranging from $125 to $5000, in each case, and would be thereby deprived of its property without due process of law, and in a proceeding wherein its liability was fixed in advance, contrary to the Constitution and laws of the United States and to the constitution and laws of the State of Texas. Your orator furthermore alleges that in such suits by individual shippers the said railway company would be deprived of the right to a trial by jury of the
26 issue involved in the said lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to section 15, article 1 of the constitution of the State of Texas.

Your orator avers that section 6 of said act provides, that any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, may file a petition setting forth the particular cause or causes of objection to such decision, rule, etc., in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant; and section 7 provides, that in all trials under section 6 the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to them. Said sections 6 and 7 pro-

vide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the commission, and the effect of said act (except as to such suits on behalf of the State) is to withdraw wholly from all railway companies subject to the operation of the act, including the railway company defendant herein, the right to make the defense that any charges, regulations or classifications of the commission are unreasonable and (with said exception) limits the making of that issue to an affirmative proceeding directly instituted for that purpose in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful defense under and subject to settled rules of evidence in any proceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and laws of the United States and especially section 1 of article 14 of the amendments to said Constitution, and to the constitution and laws of the State of Texas, and especially to sections 3 and 19 of article 1 of said constitution of Texas.

27 Your orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said court of Travis county has found that such rate or charge is not reasonable, fair or just, and the effect of said act in this respect is that upon such finding by the Travis county court the defense that such rate is unreasonable, unfair, or unjust may only thereafter be made in suits instituted by individual shippers, so that, as your orator shows, the operation of said act is to deny the right to make such defense in such suits, by individual shippers, until there has been an adjudication upon such issue in a suit between other parties in the tribunal of Travis county, and thus the practical effect of said act is to deny the right of railway companies to make a lawful defense, pending the institution by said railway companies, in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense and of making such issue under the adverse conditions and the extraordinary and arbitrary presumptions and rules of evidence established by section 7 of said act. In the meantime innumerable judgments may be recovered in suits by individuals, and said act provides no relief against such judgments, notwithstanding the said tribunal of Travis county may subsequently declare the rates and charges, for the violation of which said judgments of individuals may have been procured, were unfair, unreasonable and unjust.

Moreover, your orator, as it is advised and believes, alleges that the right pretended to be conferred by said act of contesting in a court of competent jurisdiction of Travis county, the reasonableness, fairness or justness of any rate, charge, or act of the said commission, is without effect and without value to the railway companies or persons interested in the railways and properties subject to

the operation of said act; for, as your orator is further advised and alleges, under the constitution of the State of Texas establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your
28 orator further alleges that the constitution of the State of Texas (article V) prescribes a complete judicial system for said State, and the legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State, as defined by said constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under or by virtue of the constitution of the State of Texas, or any body or tribunal constituted by legislative act, with any judicial powers or jurisdiction whatever. And your orator avers that under the limitations of jurisdiction prescribed by the said constitution of the State of Texas, the courts of Travis county, in said State, and each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company or other party dissatisfied with the decision of rates, charges, etc., as provided in section 6 of said act of April 3, 1891, and said courts, and each and all of them, are without jurisdiction and judicial power to determine or adjudicate any of the matters purporting to be committed to them, or either of them, by said sections 6 and 7 of said act.

Your orator shows that, even if it should be held that a court of Travis county would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending the litigation, the tariffs of said commission should be enforced, as provided in said act. And your orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time the defendant railway company and your orator, and the beneficiaries of its said trust, subject to said act, would suffer great and irreparable loss and injury under the enforcement of said tariffs, inasmuch as no provision is made in and by said act for restitution, in the event that it shall be finally held that the tariffs of said commission, or any of them, are unjust and unreasonable.

29 Thirteenth. Your orator further avers that the penalties denounced by said act of April 3, 1891, for failure to comply with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced; and that said excessive penalties are, as your orator verily believes, prescribed by said act with the view and intention that the same shall operate as a threat and menace to the defendant railway company, and to other railway companies, subject to the operation of said act, to the end that they may be thereby compelled and co-

erced into the adoption of the rates and charges prescribed by said commission, whether or not the same shall be reasonable, fair and just. That the enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage, and possible bankruptcy to railway companies subjected thereto; and the operation of said act in this respect is harsh, unreasonable and confiscatory; and your orator avers that said act, constituting said railroad commission, is, in this respect, contrary to and in violation of the constitution of the State of Texas.

Fourteenth. Your orator avers that unless immediate relief is granted, the tariffs of said commission will cause a serious and very large reduction in the earnings and revenue of said railway company, which will be irretrievably lost to it, and that such loss will be daily sustained until such relief is granted.

In conclusion, your orator alleges that it has requested the defendant railway company to refuse to recognize, adopt or enforce the unfair and unreasonable rates prescribed in said schedules; but said railway company has declined to so refuse, and has adopted said rates, so far as the same have been declared effective by said commission, and intends and proposes to adopt any rates already announced, but not yet effective, under the terms of said
30 schedules, and to put the same in force and effect, upon the ground that under said act of April 3, 1891, it would otherwise be defenseless against the multiplied penalties recoverable at the suits of individual shippers and the additional penalties recoverable in actions instituted by the defendant Culberson; said company fearing that the consequences of such refusal might thus be even more disastrous and ruinous than the operation and effect of said unreasonable rates.

Your orator avers that it was and is duly authorized and empowered by law and its charter to accept and administer its trust herein stated, as trustee of the second mortgage of the defendant railway company, and to take the action and sue for the relief herein stated and sought.

Your orator shows that this cause is a suit in equity, of a civil nature, and that the matter in dispute exceeds, exclusive of interest and costs, the sum or value of five thousand dollars, and that this cause is a suit arising under the Constitution and laws of the United States, to wit: Under section 10 of article 2 of the Constitution, and under section 1 of article 14 of the amendment to the Constitution, and that in this cause and suit there is a controversy between citizens of different States in which the matter in dispute exceeds, exclusive of interest and cost, the sum or value aforesaid.

In consideration whereof and forasmuch as your orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of this

nature are properly cognizable and relievable, to the end therefore that the defendants hereinafter named may answer the several matters and things hereinbefore set forth, as fully and particularly as if the same were herein again repeated, and they were thereto interrogated, and that an injunction may issue out of this court restraining and enjoining the said The St. Louis Southwestern Railway Company of Texas from putting or continuing in effect the tariffs, circulars or orders of the said commission, or either or any of them herein described, and from charging or continuing to charge the rates
31 specified in said tariffs, circulars, or orders or either or any of them; and restraining the said Reagan, McLean and Foster, and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against the said railway company for the recovery of any penalties under and by virtue of any of the provisions of the said commission law; and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said commission law or said tariffs, or either of them or both combined, or under and by virtue of the said tariffs or orders of the said commission, or either of them, from claiming or instituting suit or suits against the said railway company for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said commission law or any of its provisions or under and by virtue of the said tariffs, orders or circulars of the said commission, or any or either of them, or under and by virtue of the said commission law and the said tariffs, orders or circulars, or any or either of them combined, and restraining the said commissioners, and each of them, from making, issuing or delivering to the said railway company or causing to be delivered to it, any further tariff or tariffs, circulars or orders; and that in the meantime, until the hearing hereof, your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs, circulars and orders heretofore made and issued by said commission, and each of them, may be cancelled and declared to be null, void and of no effect by decree of this court, and that a mandatory injunction may be issued to the said commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them, and that your orator may have such further and other relief as this case may require, as well as all costs. May it please your honors to grant unto your orator a writ or writs of subpœna, to be issued out of and under the seal
32 of this honorable court and directed to the said defendants, The St. Louis Southwestern Railway Company of Texas, John H. Reagan, L. L. Foster and William P. McLean, and Charles A. Culberson, commanding said defendants, and each of them, to appear in this court at some certain day to be therein named, and to answer the premises, but not under oath (answer under oath being

expressly waived), and to abide by and perform such decree as may be rendered herein.

[L. S.] THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD, *President.*

FARRAR, JONAS & KRUTTSCHNITT,
ALEXANDER & GREEN &
WEST & McGOWN,
Complainant's Solicitors.
JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT,
Of Counsel.

STATE, CITY, AND COUNTY OF NEW YORK, *ss.:*

Louis Fitzgerald, being duly sworn, says that he is the president of The Mercantile Trust Company, the plaintiff above-named, and has been such president for a number of years past; that he has read the foregoing bill of complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

LOUIS FITZGERALD.

Sworn to and subscribed before me this 5th day of April, 1892.
WM. J. HARDING,
[L. S.] *Notary Public, Kings and New York Counties.*

33 "A."

THE MERCANTILE TRUST CO., Trustee,
vs.
THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEX., J. H. REAGAN, *et als.* } No. 188. Equity.

St. Louis Southwestern Railway Company of Texas to the Mercantile Trust Company. Second Mortgage, Securing Four Per Cent. Second-mortgage Gold Income Bond.

Principal, $4,722,500.

Due November 1st, 1989.

Interest payable January 1st and July 1st.

Filed Ap'l 30, '92.

B. G. DUVAL, *Clerk,*
By D. H. HART, *Dy.*

34 An indenture, made this 13th day of January, in the year one thousand eight hundred and ninety-one, between the St. Louis Southwestern Railway Company of Texas, a corporation organized under the laws of the State of Texas (hereinafter called the "railway company"), party of the first part, and the Mercantile Trust Company, a corporation organized under the laws of the State of New York, as trustee, (hereinafter called the "trust company"), party of the second part.

Whereas, the railway and property, road-bed, track, franchises and chartered rights of the St. Louis, Arkansas & Texas Railway Company in Texas, a corporation organized under the laws of the State of Texas, were sold to Louis Fitzgerald, purchasing trustee, by virtue of decrees and orders of sale of the circuit court of the United States for the northern district of Texas at Waco, and of the circuit court of the United States for the eastern district of Texas at Tyler, in a certain consolidated cause pending in said court, wherein The Central Trust Company of New York and The Mercantile Trust Company, both corporations of the State of New York, were plaintiffs, and said St. Louis, Arkansas & Texas Railway Company in Texas, and The Kansas and Gulf Short Line Railroad Company were defendants;

And whereas, the said sale having been duly confirmed, said railway and property, road-bed, track, franchises and chartered rights were, by order of said courts, conveyed to said Louis Fitzgerald, purchasing trustee, by deed dated January 9th, 1891, which deed is to be forthwith recorded;

And whereas, said purchaser at the said sale of said railway and property, road-bed, track, franchises and chartered rights, in
35 pursuance of the laws of the State of Texas in that behalf, did, together with his associates, form a corporation under chapter one of title eighty-four of the Revised Civil Statutes of the State of Texas, for the purpose of acquiring, owning, maintaining and operating the road so purchased as if such road were the road intended to be constructed by such corporation, which corporation so formed was named "St. Louis Southwestern Railway Company of Texas," and is the party of the first part to this indenture;

And whereas, said purchaser did convey and assign said railway and property, road-bed, track, franchises and chartered rights to the railway company so formed, by deed dated January 13th, A. D. 1891, which deed is to be forthwith recorded, upon condition that the railway company should, in part payment of the purchase-price thereof, simultaneously with the execution of such deed, make, execute and deliver its four per cent. first-mortgage gold bond for the payment on the first day of November, 1989, of the principal sum of nine million four hundred forty-five thousand dollars ($9,445,000) in gold coin of the United States of the present standard of weight and fineness, at the office of the Central Trust Company of New York, together with interest on said principal sum from the first day of November, 1890, at the rate of four per cent. per annum, payable semi-annually at said office in like gold coin on the first days of May and November—said bond to be secured by a first

mortgage upon said premises conveyed and assigned; and that the railway company should further, in part payment of said purchase-price, simultaneously with the execution of said deed, make, execute and deliver its four per cent. second-mortgage gold income bond for the payment, on the first day of November, 1989, of the principal sum of four million seven hundred and twenty-
36 two thousand and five hundred dollars ($4,722,500) in gold coin of the United States of the present standard of weight and fineness, at the office of said The Mercantile Trust Company, together with interest from the first day of January, 1891, at a rate not exceeding four per cent. per annum, payable semi-annually at said office in like gold coin, on the first day of January and the first day of July, if and when such interest shall become payable in accordance with the provisions of said bond and of this second mortgage upon said premises, to be executed by the railway company to secure said bond;

And whereas, said railway and property, road-bed, track, franchises and chartered rights were charged with the payment of said bonds of the railway company as aforesaid, in and by said deed executed by said purchaser, which deed was unanimously accepted and approved by all the stockholders and directors of the railway company and executed by the railway company in evidence of its acceptance of the terms thereof;

And whereas, the railway company has executed and delivered its said four per cent. first-mortgage gold bond, and has executed and delivered to the Central Trust Company a first mortgage upon its railway and property, road-bed, track, franchises and chartered rights to secure the same as aforesaid;

And whereas, said four per cent. second-mortgage gold income bond is to be executed and delivered by the railway company simultaneously herewith and is to be substantially of the following tenor, viz.:

37 (*Form of Bond.*)

UNITED STATES OF AMERICA.

St. Louis Southwestern Railway Company of Texas Four Per Cent. Second-mortgage Gold Income Bond.

Due November 1st, 1989.

Know all men by these presents: That the St. Louis Southwestern Railway Company of Texas (hereinafter called the "railway company"), for value received, acknowledges itself indebted to the Mercantile Trust Company, or bearer, or, if registered, to the registered holder hereof, in the principal sum of four million seven hundred and twenty-two thousand and five hundred dollars ($4,722,500) which sum the railway company covenants, promises, and agrees to pay or cause to be paid unto the bearer, or, if registered, to the registered holder, on the first day of November, in the year one thousand nine hundred and eighty-nine, in gold coin of the United States of America of the present standard of weight and

fineness, at the office of said trust company in the city of New York, and that it shall and will also well and truly pay or cause to be paid at the office of said trust company in the city of New York, interest on said principal sum from the first day of January, 1891, at such rate, not exceeding four per cent. per annum, payable in like gold coin as the net earnings of the railways, property and business of the railway company shall suffice to pay, the same to be determined, ascertained and paid in the manner hereinafter set forth, that is to say:

The board of directors of the railway company shall on the first day of October in each year, or as soon thereafter as conveniently may be, ascertain the net earnings of the railways, property
38 and business of the railway company for the period of six months ending on the next preceding 30th day of June, and the rate of interest on this bond which the said net earnings shall suffice to pay, and the said board shall then and there proceed to declare to be due and payable on the next succeeding first day of January, such interest upon this bond, not exceeding two per cent for said six months, as said net earnings shall suffice to pay.

The board of directors of the railway company shall, in like manner, on the first day of April in each year, or as soon thereafter as conveniently may be, ascertain the net earnings of the railways, property and business of the railway company for the fiscal year of twelve months ending on the next preceding 31st day of December, and the rate of interest on this bond which said net earnings shall suffice to pay for said fiscal year, and the said board shall then and there proceed to declare to be due and payable on the next succeeding first day of July such rate of interest on this bond as said net earnings for said fiscal year shall suffice to pay, not exceeding, however, such rate as will, when added to the rate declared payable on the next preceding first day of January out of the net earnings of the first six months of said fiscal year, make the total aggregate rate paid out of the net earnings of said fiscal year equal four per cent. for the entire year.

The board of directors of the railway company shall, from time to time, and within ten days after the rate of interest shall have been so ascertained and declared to be due and payable, give notice thereof in writing to the trust company; and the said rate of interest so to be ascertained and declared shall become abso-
lutely due and payable on the first day of January or July,
39 as the case may be, next succeeding the ascertainment thereof.

The board of directors of the railway company, shall in like manner ascertain and declare payable, and the railway company shall thereupon pay, on the first day of November, 1989 (the same being the date of maturity of the principal of this bond), the interest for the four months ending on said first day of November, 1989, at such rate not *succeeding* one and one-third per cent. for said four months, as the net earnings of the six months ending on the thirtieth day of June, 1989, shall suffice to pay.

The interest on this bond shall not be cumulative in any manner

or under any circumstances; and no interest shall be payable in any year except only out of net earnings actually earned during the preceding fiscal year.

It is expressly understood and agreed between the parties hereto, that the words "net earnings" herein contained shall be held and taken to signify and describe the amount or sum remaining of the gross earnings and income of the railway company from all sources during the said periods respectively, after deducting therefrom all operating expenses and all expenses for repairs, renewals and replacements, and all taxes and assessments levied or imposed upon or against the said property and business, or the incomes and earnings thereof, and all indebtedness arising from the said maintenance, operation, renewals or repairs or replacements, and all sums paid or payable by the railway company for interest upon its four per cent. first-mortgage gold bond in the principal sum of $9,445,000, or under the provisions of a certain indenture of mortgage or deed of trust dated January 13th, 1891, and executed to the Central Trust Company of New York, as trustee, to secure said four per cent. first-mortgage gold bond, and also all payments under car trusts or other charges prior to the mortgage securing this bond—but not including in the said deductions any sums or amounts which may be paid or payable for the building of new extensions or branches, or as dividends upon any stock of the company, whether preferred or common, now or hereafter created or issued.

Both the principal and interest of this bond are payable without deduction for any United States, State or municipal tax or taxes which said railway company may be required to pay or retain therefrom by any present or future laws, the said railway company hereby agreeing to pay such tax or taxes.

This bond is secured by and subject to the provisions of a second mortgage or deed of trust, bearing even date herewith, executed by the railway company to the Mercantile Trust Company, as trustee, covering all the railways, property and franchises of the railway company, as provided in said mortgage or deed of trust, to which reference is hereby made with like effect as if fully incorporated herein.

This bond shall pass by delivery unless registered in the owner's name upon the books of the railway company, such registration being endorsed upon this bond, after which no transfer shall be valid unless by endorsement upon this bond and notice thereof to the railway company for registration. After registration the principal and interest of this bond shall be payable only to the registered holder or his assigns so endorsed hereon.

This bond shall not become valid until authenticated by the certificate endorsed hereon of the trustee under said mortgage or deed of trust.

In witness whereof said St. Louis Southwestern Railway Company of Texas has caused these presents to be signed by its president, and its corporate seal to be hereunto affixed and attested by its

41 secretary, this 13th day of January, in the year one thousand eight hundred and ninety-one.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,

By —— ——, *President.*

Attest: —— ——, *Secretary.*

And whereas the trust company shall endorse upon said second-mortgage gold income bond of the railway company a certificate substantially of the following tenor, namely:

(*Form of Trustee's Certificate.*)

It is hereby certified that this is the four per cent. second-mortgage gold income bond described in the within-mentioned mortgage or deed of trust executed by the St. Louis Southwestern Railway Company of Texas to the undersigned.

THE MERCANTILE TRUST COMPANY, *Trustee,*

By —— ——, *President.*

And whereas, the said second-mortgage gold income bond and this indenture were submitted to the stockholders and the directors of the railway company at meetings duly held, and the same were then and there unanimously authorized and approved by all the stockholders and directors of the railway company, and the president and the secretary of the railway company were authorized and directed to execute the same for and on
42 behalf of the railway company and in its corporate name, and to affix thereunto the corporate seal of the railway company, and to deliver said bond and this indenture so executed for and on behalf of the railway company.

Now, therefore, this indenture witnesseth: That, in order to secure the payment of the principal and interest of said bond, hereinbefore particularly described, of the railway company, the party of the first part hereto, and the performance of and compliance with the conditions and covenants hereinafter contained, and for and in consideration of the premises, and of the sum of one dollar to it duly paid by the trust company, at or before the ensealing of these presents, and other valuable considerations, the receipt whereof is hereby acknowledged, the railway company has granted, bargained, sold, conveyed and assigned, transferred and set over, and by these presents does grant, bargain, sell, convey and assign, transfer and set over, unto the Mercantile Trust Company, the party of the second part, as trustee, and to its successors and its and their assigns, all and singular its railways, property and franchises, the same being more particularly described as follows:

Its main line beginning in the city of Texarkana, Texas, at the State line between the States of Arkansas and Texas, thence in a westwardly and southwestwardly direction through the counties of Bowie, Morris, Cass, Titus, Camp, Upshur, Smith, Henderson, Navarro, Hill, Limestone, McLennan and Coryell, to the town of Gates-

ville in said last-named county, a distance of about 305 $\frac{5}{10}$ miles; and also an extension or branch line of said railway from Mount Pleasant, Titus county, Texas, westwardly and northwestwardly through the counties of Titus, Franklin, Hopkins, Hunt, Fannin and Grayson, to the town of Sherman, in said last-named county,
43 a distance of about 115 miles; also an extension or branch line extending from Commerce, a point on said last-named branch or extension, in the county of Hunt, thence southwestwardly, through the counties of Hunt, Collin, Dallas and Tarrant, to the city of Fort Worth, a distance of about 106 $\frac{5}{10}$ miles; also a branch line or extension, from a point on the main line or Corsicana, in the county of Navarro, thence westwardly, through the counties of Navarro and Hill, to Hillsboro', in said last-named county, a distance of about 45 miles.

The total miles of main line and branch lines or extensions being about 572 $\frac{5}{10}$ miles.

Also, all its lands and rights of way, depots and depot grounds, shops and shop grounds and yards, its leases, leased and hired lands, and all rails, railways, sidings, switches, bridges, fences, turn-tables, water tanks, and all other buildings, structures or fixtures whatsoever, acquired or to be acquired, for the use and operation of said railways and property;

Also, all the rolling stock and equipment, machinery, tools and implements, fuel and materials, and all other property of every character or description, real, personal or mixed, and wheresoever situate, belonging to the railway company, or hereafter acquired by it, for the use or operation of said railways;

And also all rights, privileges and franchises of the railway company, now possessed or hereafter acquired, belonging or pertaining to the said railways, and the construction, maintenance, use and operation of the same.

Together with all the rights, liberties, easements, hereditaments and appurtenances unto any of the hereby granted and mentioned premises belonging or appertaining, and the reversions and remainders, rents, tolls, earnings, income, issues and profits of
44 the said premises, or any part or parcel thereof, and all the estate, right, title, interest, property, claim and demand of every nature of the railway company, now owned or that may hereafter be acquired, as well at law as in equity, of, in or to the same, or any part thereof.

Subject, nevertheless, to a certain first mortgage or deed of trust bearing date the 13th day of January, 1891, made by the railway company to the Central Trust Company of New York, conveying the said premises to secure the payment of a certain four per cent. first-mortgage gold bond, executed by the railway company for the payment of the principal sum of $9,445,000, together with the interest thereon, as in said mortgage or deed of trust set forth.

To have and to hold the said railways, property, premises, things, rights, privileges, immunities and franchises hereby conveyed, or assigned, or intended so to be, unto the said trust company and its successors, and its and their assigns, subject, however, to said first

mortgage or deed of trust, in trust, to secure the payment of the said bond and of the interest to become due thereon according to the tenor of said bond and this indenture, and for the other uses and purposes herein expressed, and upon the terms and conditions, and subject to the covenants and agreements contained in this indenture.

And it is hereby expressly covenanted and agreed, by and between the parties hereto, the railway company covenanting for itself and its successors and assigns, with the trust company and its successor or successors, and its and their assigns, in the trust hereby created, that the further trusts, uses and conditions, and the covenants upon which the said premises hereby mortgaged and conveyed, are
45 to be held by the trust company, and the covenants of the railway company with the said trust company, in respect to said premises, are as follows, that is to say:

Article I. Until default shall be made in the payment of the principal or interest of said bond of the railway company, or of any part of such principal or interest, according to the tenor of said bond and of these presents, or in the performance or observance by the railway company of any condition, covenant, agreement or requirement of the said bond or of this indenture, to be performed or observed by the railway company, the trust company shall permit and suffer the railway company, its successors or assigns, to possess, manage, operate and enjoy the premises hereby conveyed or assigned, or intended so to be, in any manner not inconsistent with these presents, and to receive, take and use the rents, tolls, earnings, income, issues and profits thereof.

Article II. If at any time any portion of the lands, tenements or hereditaments hereby mortgaged and conveyed (not part of the railway tracks), cannot be advantageously used in connection with the use or operation of said railways by reason of any change of location, change of track, or by reason of any other cause, the same may be exchanged for other lands, tenements or hereditaments of equal value, or be sold, conveyed, or otherwise disposed of, and the trust company shall, if so requested, convey the same by release or otherwise; provided that any lands, tenements or hereditaments acquired by exchange shall be conveyed to the trust company for the further security of said bond of the railway company, subject, however, to said first mortgage of the railway company; and that the proceeds of any lands, tenements or hereditaments so sold, conveyed or otherwise disposed of, or a sum equal thereto, shall
46 be used and applied by the railway company in the purchase of other lands, tenements or hereditaments which shall be conveyed to the trust company, subject to said first mortgage of the railway company, to be held by the trust company hereunder as a part of the mortgaged premises, for the further security of said bond of the railway company.

The trust company and its successors and its and their assigns shall also have full power to allow the railway company, its successors or assigns, from time to time to dispose of such portion of the equipment, rolling stock, machinery and implements

at any time held or acquired for the use of the said railways as may have become unfit for such use, replacing the same by new to the value of that sold, which shall immediately become subject to this mortgage, and shall be expressly assigned, subject to said first mortgage, to the trust company and its successor or successors in the trust under this mortgage, on its or their demand. The trust company may, in like manner, consent to any changes in the location of the track, or alteration or changes of station-houses, depots, shops or other fixtures which, in the judgement of the company, shall have become expedient, and execute the instruments necessary to enable the railway company to carry the same into effect; but any tracks, premises or property acquired in substitution for any released, changed or altered shall immediately become subject to this mortgage and be conveyed to the trust company (subject, however, to said first mortgage), to be held as part of the premises hereby mortgaged.

The sworn statement of the president or vice-president and the chief engineer for the time being of the railway company may be received by the trust company as sufficient evidence of any of the facts mentioned in this article, and shall be full protection to the trust company for any action taken by it on the faith thereof,
47 but the trust company may, in its discretion, require such further and additional evidence as to it may seem reasonable.

Article III. Upon delivery to the trust company of said second-mortgage gold income bond of the railway company, the trust company shall authenticate the same by signing the certificate endorsed thereon, and shall deliver the same so certified to said Louis Fitzgerald, purchasing trustee.

The railway company covenants and promises with and to the trust company that it shall and will promptly pay the interest and principal of the said bond here-before described, as and when the same shall become due and payable, according to the tenor and effect of said bond, and without deduction from either principal or interest thereof for any United States, State or municipal tax or taxes which, under any present or future law, may be required to be paid or deducted therefrom, the railway company hereby agreeing to pay such tax or taxes.

Article IV. In case the mortgaged premises shall be sold under the power of sale contained in said first mortgage or deed of trust executed by the railway company to secure its said first-mortgage bond, or in case said mortgaged premises shall be sold in pursuance of judicial proceedings for the foreclosure of said first mortgage or deed of trust, then in any and every such case the principal of said hereinbefore-described second-mortgage gold income bond of the railway company shall thereupon become and be immediately due and payable simultaneously with such sale.

Article V. In case any default shall be made in the payment of the principal or interest of said bond of the railway company, or of any part of such principal or interest, as and when the same shall become due or payable according to the tenor of said bond
48 and of these presents, then and in any and every such case,

the railway company, its successors and assigns, shall, upon demand of the trust company, forthwith surrender to the trust company, forthwith surrrender to the Trust Company the actual possession of, and the Trust Company personally, or by its agents or attorneys, shall be entitled forthwith to enter into and upon and take possession of all and singular the said property and premises, with the appurtenances hereby conveyed or mortgaged, or so intended to be, together with all the maps, records, books, papers and accounts of the said railway company; and the trust company having and holding said premises shall be authorized to use, operate and manage said premises, by such agents, servants and attorneys as the said trust company may select, and from time to time, at the expense of the trust estate, to insure or keep insured, the buildings machinery and other insurable property, upon said premises, subject to the lien of these presents, and likewise, from time to time, at the expense of the trust estate, to make all necessary or proper repairs, replacements or renewals or improvements thereto, as may seem to the trust company judicious, and as the net income derived by it from said premises shall suffice to pay for; and to receive and collect the rents, tolls, earnings, income, issues and profits of said premises, and to pay therefrom all the proper costs, charges and expenses of the trust and of so taking, holding and managing said premises, including a reasonable compensation to the trust company, its agents, attorneys, and counsel, and all taxes and other charges prior to the lien of these presents, and all expenses of such operation, repairs, alterations and improvements; and after deducting all said amounts the trust company shall apply any balances remaining to the payment of any interest on said bond which may have become due and payable according to the tenor and effect of said
49 bond, in the order of the maturity of the instalments of such interest.

In case the principal of said bond of the railway company shall have become due, or shall, after such entry, become due then any such balance in the hands of the trust company which may have accrued and not have been actually paid over, and any such balance thereafter accruing, shall be applied to the payment of the whole amount of the principal and interest due upon said bond, *pro rata*, without any preference or priority whatever as to the principal or interest, and ratably according to the aggregate amount of the principal and accrued interest due and unpaid.

After payment of all amounts due and payable upon said bond, according to the tenor and effect thereof and of these presents, the trust company shall restore possession of the premises to the railway company, its successors or assigns; and if the principal of said bond shall not have become due and have been paid, said premises shall thereupon be held subject to this mortgage or deed of trust as before.

Article VI. In case any default shall be made in the payment of the principal or interest of said bond of the railway company, or of any part of such principal or interest when the same shall become

due or payable, according to the tenor and effect of said bond and of these presents, then, and in any and every such case, the trust company shall be entitled, with or without entry, to sell all the premises, estate, property, rights and franchises hereby conveyed by the railway company, or so intended to be, at public auction in the city of Waco, Texas, first giving notice of the time, terms and place of sale and of the property to be sold, by publication in one or more newspapers published in said city of Waco, and one or more newspapers published in the city of New York, State of New York, at least once a week for sixty days next preceding such sale;
50 and from time to time to adjourn such sale in its discretion, and upon such sale to make and deliver to the purchaser or purchasers of the premises, estate, property, rights and franchises so sold a good and sufficient deed or deeds for the same, which sale shall be a perpetual bar in law and in equity against the railway company and all persons and corporations claiming and to claim by, through or under it. Upon the making of any such sale (or in case of sale of the mortgaged premises, pursuant to judicial proceedings), the proceeds of such sale shall be applied as follows, to wit:

First, to the payment of the costs and expenses of such sale, including a reasonable compensation to such trust company, its agents, attorneys and counsel, and of all expenses, liabilities and advances made and incurred by such trust company in managing and maintaining the property hereby conveyed, or so intended to be, and of all taxes, assessments or liens prior to the lien of these presents, except any taxes, assessments or other superior liens to which such sale shall have been made subject.

Secondly, to the payment of the whole amount of principal and interest which shall then be owing or unpaid upon said bond, whether the said principal, by the tenor of said bond, be then due or yet to become due; and in case of the insufficiency of such proceeds to pay in full the whole amount of such principal and interest due and unpaid upon the said bond, then to the payment of such principal and interest, *pro rata*, without preference or pri-
51 ority, and ratably, to the aggregate amount of such principal and accrued and unpaid interest.

Thirdly, to pay over the surplus, if any, to the railway company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

And it is further declared and agreed that the receipt of the trust company, its successor or successors, who shall make the sale hereinbefore authorized, shall be a sufficient discharge to the purchaser or purchasers at such sale for his or their purchase-money, and that such purchaser or purchasers, his or their heirs or assigns or personal representatives, shall not, after paying such purchase-money and receiving such receipt of such trust company, be obliged to see to the application of such purchase-money upon or for the purposes of these presents, or be in anywise answerable for any loss, misapplication or non-application of such purchase-money by the trust company.

Article VII. The several remedies in these presents specified are cumulative and not exclusive one of the other. In case of any default in the payment of the principal or interest, or any part of the principal or interest, of said bond of the railway company when the same shall become due or payable according to the tenor and effect of said bond and of these presents, or in case default shall be made in performing or complying with any covenant or condition of this indenture, then, and in any and every such case, the trust company, its successor or successors and its or their assigns, may proceed to enforce its or their rights hereunder, and the rights of the holder of said bond, by sale or entry, or both, or by action, suit or other judicial proceedings.

52 Article VIII. Upon the filing of a bill in equity or other commencement of judicial proceedings to enforce the rights of the trust company under these presents upon any default by the railway company under this mortgage or deed of trust, the trust company shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the property hereby mortgaged, and of the rents, tolls, earnings, income, issues and profits thereof pending such proceedings.

The railway company covenants and agrees that it will not claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now existing or which may hereafter be passed in the State of Texas, in order to prevent or hinder the enforcement or foreclosure of this mortgage or the absolute sale of the premises hereby granted, free from any right of redemption, or the final and absolute putting into possession thereof, immediately after such sale, of the purchaser or purchasers thereof, but the benefit of all such laws is hereby waived.

Article IX. The railway company covenants and agrees that it shall and will pay and discharge, before the same shall fall into arrears, all taxes, water rates and assessments upon said mortgaged premises, and shall and will keep said railways, together with the bridges and structures upon the said mortgaged premises, in good order and repair, and shall not create or suffer to be created any mechanics', laborers' or other lien or charge whatsoever upon the mortgaged premises, or any part thereof, which might or could be prior to the lien of these presents, or do or suffer to be done any matter or thing whereby the lien of these presents might or could be impaired.

Upon default by the said railway company in paying any such taxes, assessments, liens or other charges, the trust company may, if so advised, and without impairment of or prejudice to any of its rights under this mortgage by reason of such de-
53 fault, itself pay such taxes, assessments, or other liens or charges, and have a lien upon the mortgaged premises for its advances for that purpose.

Article X. The railway company, for itself and all persons and corporations hereafter claiming through or under it, or who may at any time hereafter become holders of liens junior to that of these presents, hereby expressly waives and releases all rights

to have the estates comprised in the security intended to be created by these presents marshalled upon any foreclosure or other enforcement thereof; and the trust company herein, and any court in which foreclosure of this mortgage or administration of the trusts hereby created is sought, shall have the right to sell the entire railways of every description mortgaged and conveyed by the railway company to the trust company as an entirety.

In case of any sale, whether under the power of sale hereinbefore provided or under the order or decree of a court, the holder of said bond of the railway company, or any person or persons having an interest in said bond, may bid for and purchase said mortgaged premises on equal terms with other persons. The purchaser or purchasers at any such sale, in making settlement for or on payment of the purchase-money bid, shall be entitled, on presenting said bond, to be credited on account thereof with the net proceeds of the sale which would be applicable to the payment of said bond or with the portion thereof to which such purchaser or purchasers may be equitably entitled.

Article XI. The railway company shall and will, at any time, upon the request of the trust company, make, do, execute, acknowledge and deliver all such acts, deeds and assurances in law as may be reasonably advised, devised or required for effectuating the intention of these presents, and for the better assuring and confirming unto the said trust company, and its successors in
54 the trust hereby created, upon the trusts and for the purposes herein expressed, all and singular the premises hereby conveyed or assigned or intended so to be.

Article XII. Upon payment in full of the principal and interest of the hereinbefore recited bond of the railway company, when and as the same shall become due and payable, the estate, right, or title of the trust company, under, in or to the railways and premises hereby conveyed and mortgaged by the railway company shall cease and determine, and the trust company, shall, if required by the railway company, and at its cost and expense, enter upon the records, satisfaction of the lien created by this mortgage upon said railways and premises.

Article XIII. It is understood and agreed that the trust company shall not be required to take any step in the execution of the trusts hereby created, if in its opinion such action will be likely to involve it in expense or liability, unless the holder of said bond of the railway company, or some person or persons interested in said bond shall, as often as required by the trust company, give it reasonable indemnity against the same, anything herein contained to the contrary notwithstanding; and that the trust company and its agents, attorneys and counsel, shall be entitled to a reasonable compensation for all services rendered in connection with the trust hereby created or in pursuance of the provisions of this indenture. The railway company agrees to pay to the trust company such compensation, and also all expenses reasonably incurred by the trust company hereunder, and the trust company shall have a lien therefor upon the mortgaged property and the proceeds thereof.

55 The trust company may resign, and thereby become discharged from the trusts hereby created, by notice in writing to be given to said railway company at least two months before such resignation shall take effect; but such resignation shall take effect immediately upon the appointment of a new trustee, if such new trustee hereunder shall be appointed before the time limited by such notice.

It is further understood and agreed, by and between the parties hereto, that the trust company shall not be answerable for any default or miscarriage of any agent or attorney by it appointed hereunder, if such agent was selected with reasonable care, nor for any error or mistake of judgment made by it in good faith, but shall only be liable for gross negligence or willful misconduct in the execution of said trusts.

In case at any time hereafter the said trust company or any trustee hereafter appointed shall resign or become unfit to act, or be removed, its successor shall be appointed by the holder of said bond of the railway company, or by the assigns or nominees of such holder, by an instrument in writing executed by said holder, his assigns or nominees, a copy of which instrument shall be delivered to the railway company.

Any new trustee appointed shall thereupon become vested with all the property, rights, duties and trusts, of the trust company, with like effect as if named as trustee herein, and the trustee so resigning or removed shall, on the written request from the new trustee who may be appointed, immediately execute an instrument of transfer to vest in such new trustee upon the trusts herein expressed, all the property, privileges and rights hereunder of the trustees so resigning or removed. It is understood and agreed that the words "trust company" or "trustee" as used in this instrument, shall be held and construed to mean the party of the second part, or its successor or successors for the time being
56 in the trust hereby created.

Article XIV. Whereas, in order to expedite the recording of this deed of trust or mortgage ten counterparts thereof are simultaneously executed, acknowledged and delivered by the party of the first part to the party of the second part:

Now, therefore, this indenture further witnesseth, that although ten counterparts are simultaneously executed, acknowledged and delivered by the party of the first part to the party of the second part, and the said party of the second part, in evidence of its acceptance of the trusts hereby created, has likewise simultaneously executed and acknowledged the same, to the end that all or any one or more thereof may be recorded, that any one or more of said counterparts so executed, acknowledged and delivered shall severally or collectively be deemed to be an original and, for all intents and purposes, but one instrument.

In witness whereof, the party of the first part and the party of the second part have respectively caused these presents to be signed in their corporate names by their presidents, and their respective

corporate seals to be hereunto affixed and attested by their respective secretaries the day and year first above written.

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By S. W. FORDYCE,
[CORPORATE SEAL.] *President.*

Attest: W. S. NEWLIN, *Secretary.*

Ssgned, sealed and delivered in the presence of—
VICTOR MORAWETZ.
J. W. PHILLIPS.

57 THE MERCANTILE TRUST COMPANY,
By LOUIS FITZGERALD,
[CORPORATE SEAL.] *President.*

Attest: H. C. DEMING, *Secretary.*

Signed, sealed and delivered in the presence of—
A. R. HERRIMAN.
W. H. SEWARD, JR.

THE STATE OF TEXAS, }
County of Smith, } ss:

Before me, the undersigned, Jeff. D. Burns, a notary public of the State of Texas within and for the county aforesaid, on this 13th day of January, in the year one thousand eight hundred and ninety-one, personally came the St. Louis Southwestern Railway Company of Texas, by S. W. Fordyce, its president, known to me to be the person whose name is subscribed to the foregoing instrument as president of said St. Louis Southwestern Railway Company of Texas, and acknowledged the same to be the act of said corporation, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 13th day of January, A. D. 1891.

[NOTARIAL SEAL.] JEFF. D. BURNS,
Notary Public, Smith County, Texas.

58–217 STATE OF NEW YORK, }
City and County of New York, } ss:

Before me, the undersigned, George H. Taylor, a commissioner of the State of Texas within and for the State and city aforesaid, on this twenty-second day of January, in the year one thousand eight hundred and ninety-one, personally came The Mercantile Trust Company, by Louis Fitzgerald, its president, known to me to be the person whose name is subscribed to the foregoing instrument as president of said The Mercantile Trust Company, and acknowledged the same to be

the act of said corporation, and that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this twenty-second day of January, 1891.

[COMMISSIONER'S SEAL.] GEORGE H. TAYLOR,
A Commissioner of Deeds of the State of Texas
in the State and City of New York,
29 Nassau Street, New York City.

218 (Original.)

In the Circuit Court of the United States for the Western District of Texas.

THE MERCANTILE TRUST COMPANY, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, and Others, Defendants. } No. 188. Equity.

Answer of the St. Louis Southwestern Railway Company of Texas.

Perkins, Gilbert & Perkins, Greenville, Texas, solicitors for defendant The St. Louis Southwestern Railway Company of Texas.
Alex. G. Cochran, Winslow S. Pierce, of counsel.

Filed June 15, 1892.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Dy.*

219 In the Circuit Court of the United States for the Western District of Texas.

THE MERCANTILE TRUST COMPANY, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. Reagan, William P. McLean, and L. L. Foster, Constituting the Railroad Commission of Texas, and Charles A. Culberson, Defendants.

The Answer of the Defendant The St. Louis Southwestern Railway Company of Texas to the Bill of Complaint of the Complainant Herein.

The defendant The St. Louis Southwestern Railway Company of Texas, now and at all times hereafter reserving all manner of benefit and advantage to itself of exception to the many errors
220 and insufficiencies in said bill contained, for answer thereto or unto so much or such parts thereof as this defendant is advised it is material for it to make answer unto, answering, says—

That for the purpose of avoiding unnecessary prolixity in this answer this defendant, inasmuch as it cannot deny, hereby admits all the allegations in the said bill of complaint contained, except in so far as the same or parts thereof shall be hereinafter denied, modified, or qualified.

Touching the allegations in the sixteenth article or subdivision of the bill of complaint, this defendant specially admits that it has been requested by the complainant herein to refuse to recognize, adopt, or enforce the rates prescribed in the schedules, circulars, and orders of said railroad commission, and further admits that it has declined to comply with such request, but has, under protest, put in force said rates as far as the same have been declared effective by said commission, and this defendant avers and alleges that although said rates so fixed are unfair, unjust, unreasonable, and confiscatory, and although it denies that the same can be lawfully applied to it, it has declined to so refuse to adopt the same, and has, under protest as aforesaid, put the same into effect, fearing that by reason of the multiplied and excessive fines and penalties denounced by the act of April 3rd, 1891, constituting the railroad commission, and by reason of the innumerable suits therein and thereby authorized and provided for and the vast cost and expense attending the defense thereof, the consequences of such refusal might be even more disastrous than the operation and effect of said unreasonable rates, and this defendant, now submitting itself to such orders and decrees as this honorable court may make herein, avers that it is rem-
221 ediless and without protection in this behalf except in this honorable court, and prays that such decrees and orders as this court may make herein shall be made with due regard to its protection in the premises.

And now, having fully answered, this defendant prays to be hence dismissed with its reasonable costs and charges in this behalf sustained.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By EDW. GOULD, *1st Vice-president.* [SEAL.]
PERKINS, GILBERT & PERKINS,
Solicitors for Defendant.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss.:

Edwin Gould, being duly sworn, says that he is the first vice-president of the defendant The St. Louis Southwestern Railway Company of Texas named in the foregoing answer; that he has read the answer and knows the contents thereof; that the same is true of his own knowledge except as to those matters therein stated to be alleged on information and belief, and that as to those matters he believes it to be true.

EDWIN GOULD.

Sworn and subscribed to before me this 31st day of May, 1892.

E. A. JACKSON,
Notary Public, N. Y. Co.

[SEAL.]

(3297.)

222 In the Circuit Court of the United States for the Western District of Texas. In Equity.

THE MERCANTILE TRUST COMPANY, Complainant, *vs.* THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, and Others.	Original Bill.
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Complainant, *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, and Others.	Cross-bill.

Leave is hereby granted to the St. Louis Southwestern Railway Company of Texas to file its cross-bill in the above styled and numbered cause, as prayed for therein.

A. P. McCORMICK,
Circuit Judge.

June 16th, 1892.

[Endorsed:] No. 188. Equity. Mercantile Trust Co. *vs* St. Louis Southwestern R'y Co. of Texas, J. H. Reagan, *et als.* Order granting leave to the deft R'y Co. to file cross-bill. Filed June 18, '92. B. G. Duval, clerk, by D. H. Hart, d'y.

223 (Original.)

No. 188. Equity.

In the Circuit Court of the United States for the Western District of Texas. In Equity.

THE MERCANTILE TRUST COMPANY, Complainant, *against* THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, and Others.	Original Bill.
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Complainant, *against* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, and Others.	Cross-bill.

Cross-bill of the St. Louis Southwestern Railway Company of Texas.

Perkins, Gilbert & Perkins, Greenville, Texas, solicitors for cross-complainant.
Alex. G. Cochran, Winslow S. Pierce, of counsel.

Filed June 18, 1892.

B. G. DUVAL, *Clerk,*
By D. H. HART, *Dy.*

223½ In the Circuit Court of the United States for the Western District of Texas, Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Complainant, *against* THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, and Others, Defendants.	Original Bill.
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Complainant, *against* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, and Others, Defendants.	Cross-bill.

Cross-bill of the St. Louis Southwestern Railway Company of Texas.

To the judges of the circuit court of the United States for the western district of Texas, fifth circuit, sitting in equity:

224 The St. Louis Southwestern Railway Company of Texas, a corporation organized and existing under and by virtue of the laws of the State of Texas, by leave of court first had and obtained, brings this its cross-bill of complaint against The Mercantile Trust Company, the complainant herein, the "Railroad Commission of Texas," organized under an act of the legislature of the State of Texas, approved April 3d, 1891, and which is a citizen of the State of Texas, and whose office is in the western district of Texas, and which is a resident and inhabitant of said district; and John H. Reagan, William P. McLean and L. L. Foster, citizens and residents of the State of Texas, constituting said "railroad commission of Texas," and Charles A. Culberson, a citizen and resident of said State of Texas; and thereupon, humbly complaining, your orator shows unto your honors as follows:

First. That on or about the — day of April, 1892, the said Mercantile Trust Company filed and exhibited in this court its bill of complaint against your orator and against said Reagan, McLean and Foster and Charles A. Culberson, as defendants, wherein and whereby the said Mercantile Trust Company, complainant, alleged, in substance:

That the defendants Reagan, McLean and Foster, claiming to act as the railroad commission of Texas, and appointed under and by virtue of an act of the legislature of the State of Texas, approved on the 3d day of April, 1891, had announced and undertaken to establish and make effective as against your orator and other railroad companies operating railroads in the State of Texas, certain rates, tariffs, schedules and classifications for the transportation of commodities therein described over the lines of railway of your orator and of other railroad companies of the State of Texas.

That said complainant is trustee of the second mortgage, executed by your orator to secure its second-mortgage income bonds now outstanding to the amount of $4,722,500, issued for value, and payable to the Mercantile Trust Company or bearer; that said mort-

gage is subject to a prior lien and mortgage covering the
225 property of your orator and securing outstanding indebtedness aggregating $9,445,000.

That the said rates, tariffs and classifications were not established by said commission fairly, nor in the method prescribed by said act of April 3, 1891, nor upon due notice and hearing, nor in accordance with the evidence showing and information given afforded and available to the commission. That the said rates, charges and classifications were unreasonable, unjust and confiscatory, and would operate, if adopted by your orator, to reduce its earnings in a sum exceeding $150,000 per annum, and to impair and diminish the earning capacity, and, hence, the value of its property pledged to secure said second-mortgage bond, and to destroy the property and interests of said Mercantile Trust Company, as trustee, and of the beneficiaries of its trust, and to take the same without due process of law, and to deny to your orator and to the said Mercantile Trust Company, as trustee, and to the beneficiaries of its trust the equal protection of the laws. That the enforcement of said rates would prevent your orator from earning the interest upon its said second-mortgage bond, or any part of said interest, and that the same would destroy the ability of your orator to earn the interest upon prior obligations or expenses of operation, threaten default and foreclosure of prior liens, and sale of your orator's railroad and property, which would not then bring, and, by reason of its diminished earning capacity, would not be worth, a sum equal to said prior obligations. That the rates, charges, tariffs and rules of the commission are made, by said act, conclusive in all cases except in a direct proceeding to test the reasonableness thereof to be instituted in a court of competent jurisdiction in Travis county, Texas, and that multiplied and excessive fines and penalties are denounced by said act for any violation of any order of the commission or departure from the rates, charges and tariffs prescribed by the commission. That by reason of the fact that your orator would be, by the operation of said act, remediless and without defense in proceedings against it for
226 such multiplied and excessive fines and penalties, and for alleged damages in case it disregarded the unreasonable rates, tariffs and orders of the commission, your orator had feared to refuse and had declined to refuse to adopt and enforce, and had already adopted and proposed further to adopt and enforce, the said unreasonable, unfair and unjust tariffs, charges and rates, and that defendants Reagan, McLean and Foster, claiming to act as such commission, and defendant Culberson, claiming to act as the attorney general of Texas, claim the right and threaten to exercise the powers purporting to be conferred upon them by said commission act in respect to the enforcement of the rates of the commission and the penalties for departure from said unreasonable and unjust tariffs established by it.

Complainant, in and by said bill of complaint, prayed for a decree cancelling and annulling the tariffs already established by the commission and restraining it from issuing further tariffs, and restraining your orator from adopting or enforcing said tariffs, and

enjoining the institution of suits and proceedings against your orator for alleged violation of said tariffs and orders of the commission. Complainant filed with its said bill of complaint, as exhibits thereto, copy of the said second mortgage of your orator to complainant as trustee, copies of the schedules, tariffs and circulars established and published by the commission prior to the filing of the bill, and a copy of said act of the legislature of Texas, approved April 3, 1891. For the full terms, statements, allegations and prayer of said bill, and for the full terms and contents of said exhibits, your orator refers to the said bill and exhibits respectively, with the same effect as if they were herein incorporated and set out.

Your orator files herewith its answer to said original bill of complaint, substantially admitting (as it could not deny) the allegations thereof; and now, to the end that it may represent to the court its own rights and interests, and those of its stockholders, in the premises, and may have the redress and relief to which it and they
227 are entitled, it exhibits (with leave of court, as aforesaid) this its cross-bill of complaint, and further shows to the court as follows:

Second. Your orator avers that in addition to its bonded indebtedness alleged in the complaint, it has lawfully issued for value, and there is now outstanding, its capital stock to the amount of $2,500,000, out of an authorized capital of $15,000,000. That its said bonds and stock were issued in the manner and for the objects prescribed and authorized by its charter, and the same represents a part of the cost to your orator of its railroad, property and equipment, and of the renewal, replacement, improvement, betterment and extension thereof, and represents under just and reasonable conditions, the fair value of said property.

That prior to the month of June, 1891, the railroad and property now belonging to your orator was in the possession of receivers appointed by the circuit court of the United States for the northern district of Texas under bills to foreclose the mortgages of the St. Louis, Arkansas and Texas Railroad Company of Texas, all of which is more fully set forth in the ninth paragraph of the original bill of complaint of the Mercantile Trust Company; that since said month of June, 1891, your orator has been in possession of its railways and property, described in said original bill of complaint and in its said second mortgage, and during the period between said month of June, 1891, and the 31st day of March, 1892 (down to which latter date your orator's accounts have been finally made up), the earnings from the railroad and property of your orator, and its expenses have been as set forth in the following exhibit of its income account:

228 EXHIBIT OF INCOME ACCOUNT, JUNE 1, 1891, TO MARCH 31, 1892.

Debits.

Operating expenses	$1,250,414 20
Taxes accrued	37,161 55
Interest on first-mortgage bonds at 4 per cent	314,833 34
Interest and exchange	883 49
Sundry amounts	3,744 65
Total debits	1,607,037 23

Credits.

Gross earnings:	
Freight	$924,658 67
Passenger	300,054 74
Mail	33,387 46
Express	19,205 87
Telegraph	1,941 38
Miscellaneous	12,740 99
Sundry amounts	4,642 12
Total earnings and credits	$1,296,631 23
Deficit	$310,406 00

Your orator shows that during the ten months embraced in said income account it was only able to earn the sum of $4,427.34, over the expenses of operation, applicable to the payment of interest, and that the interest charge accumulated during said period upon its first-mortgage bond amounted to $314,833.34.

Your orator further states that the results of its operations for the month of April, 1892, have been carefully estimated, largely upon the basis of actual returns, to have been as follows:

229

Operating expenses	$110,000 00
Taxes accrued	3,600 00
Interest on first-mortgage bonds	31,483 33
Total debits	$145,083 33
Deduct gross earnings	80,000 00
Deficit from operations	$65,083 33

So that your orator avers that the result of its operations for the eleven months ending April 30th, 1892, covering the entire period during which your orator had been in possession of its said railroad and property, shows a deficit in its earnings of $29,172.66 to meet the actual expenses of operation (not including interest on first-mortgage bond); and your orator avers that such deficit will be further increased as a result of its operations, under the prevailing

rates and tariffs, during the month of May, 1892, which month closes the first year of its operations. Your orator states that it has been compelled to borrow large sums of money to provide for the expenses of its operation, its fixed charges and the betterment and improvement of its property, and that it now owes a floating debt over and above its mortgage indebtedness, incurred for these purposes, aggregating a sum in excess of $275,000.

That the stockholders of your orator have never received any dividend or return whatever for or upon their investment or stock. That, notwithstanding the inadequacy of your orator's earnings to provide any return upon the capital invested in or the value of your orator's property, and notwithstanding the rates and charges for transportation in force upon your orator's railway at the time the commission was established, were, as your orator now alleges the fact to be, very low and inadequate; and notwithstanding these conditions were represented to and were known to the commission, and naught to the contrary thereof appeared, said commission, without warrant or justification, proceeded to establish the reduced, unreasonable and unjust tariffs and regulations set forth in
230 Exhibit C to the complaint, and has undertaken to require, and claims the right to require, conformity therewith on the part of your orator. Your orator here adopts and specially avers the statements and allegations contained in the sixth article or paragraph of the original bill of complaint herein, and avers that the same are in all respects true.

Third. Your orator admits and here avers all of the allegations contained in the seventh, eighth, ninth, and tenth paragraphs of the said original bill of complaint of the Mercantile Trust Company, and asks that said allegations shall be deemed and taken to be by it made and as if herein incorporated; and avers upon information and belief that, the diminution and reduction in its revenues consequent upon the adoption and enforcement of the rates and tariffs promulgated by the railroad commission, have been and will be as great as alleged in the said bill of complaint.

Your orator avers that its revenues upon substantially all interstate business are absolutely controlled by the rates established by said commission and in force for transportation within the State of Texas and from interior Texas points to Galveston, and such interstate rates therefore are practically established by the said commission to the same extent as if interstate shipments were by law subject to the control of that body. The allegations in this behalf contained in the tenth paragraph of the original bill of complaint herein are here particularly referred to, adopted and reaverred.

Fourth. Your orator here adopts and avers all of the allegations contained in paragraph 11th of the original bill of complaint of the Mercantile Trust Company, and states that the same are true.

Your orator avers that by circular No. 34, established and published by the said railroad commission, included in Exhibit C to the original bill of complaint, the commission undertakes, upon the demand of the owner of any freight or property contained in

any car owned by your orator, or in its possession, to
231 surrender and deliver said car to other railroad companies whose lines connect with those of your orator, to be used by said other railroad companies upon its own lines and connections in the transportation of the property contained in said car to any place off the line of your orator's railway designated by the owner of said property or freight. That under the terms of said circular the cars of your orator may be taken from its possession and used as above stated, without its consent, without adequate compensation, and without other compensation for use thereof while off your orator's lines and out of its possession than a rental fixed by the commission covering the period of such enforced bailment, and without any security for the safe or prompt return of said car or indemnity against damage or injury which may be done thereto.

Said circular further requires your orator, upon the tender to it of any car containing freight or property for transportation, and demand of the owner of such freight or property, or upon the demand of any railway company having such car in its possession, to receive the same for transportation, to any point on or beyond its own line which the owner of such freight or property may designate, and to pay to the railway company or person or corporation owning the car a mileage rate for every mile which said car may—under the direction of the owner of the freight therein, or of the said railway company tendering said car—be hauled over your orator's railway, although your orator owns and possesses a large number of cars for the transportation of property received by it as a common carrier, and has, except during rare seasons of extraordinary business activity, a sufficient number of idle cars available for such use. And said circular further requires that, after such car has been transported to the point designated by the owner of the freight contained therein, the same shall be returned and rehauled by your orator over its railway and be redelivered to the company from which it was received without any compensation whatever for such carriage and service.

And said circular further requires your orator to perform
232 without compensation or reward any necessary switching service in receiving from or delivering to any connecting railway line such car.

Your orator submits that in the respects above recited, your orator is, and would be by said order and circular, and by the requirements of the commission therein contained, deprived of its property without due process of law, and not in due course of law, contrary to section 1 of article 14 of the amendments of the Constitution of the United States, and of sections 17 and 19 of article 1 of the constitution of the State of Texas.

That the effect and operation, and as your orator is informed and verily believes, the purpose of said circular is among other things the regulation of commerce between the State of Texas and other States and foreign countries, and the regulation of the rates of transportation of shipments of an interstate character, by per-

mitting the interruption of such commerce and shipments at points within the State of Texas in such a way that a point intermediate between the real points of origin and destination of the shipments may be fixed as point of temporary destination, and the shipment rebilled from the latter point to its actual and final destination,—the shipment in the State of Texas, between this temporary point and the actual and real point of origin or destination, taking the rate established by the said commission and not the through interstate rate established under and in accordance with the Constitution and laws of the United States.

In this respect, your orator shows that said order, rate and rule, so announced and published as said circular No. 34, and said act of the legislature of the State of Texas, purporting to confer upon said railroad commission power and authority to make, announce and enforce said order, rate and rule, are invalid and void, because in conflict with and in violation of section 8 of article 1 of the Constitution of the United States, and an act of Congress of the United States, entitled "An act to regulate commerce," approved February 4, 1887, and the amendments thereto.

233 Fifth. Your orator here adopts and avers all of the allegations contained in the twelfth paragraph of said original bill of complaint of the Mercantile Trust Company, and shows that in section 5 of said act of the legislature of Texas, establishing the said railroad commission, it is provided that in actions between private parties and railway companies, brought under said law, the rates, charges, orders, rules, regulations, and classifications prescribed by said commission before the institution of such action shall be held conclusive and deemed and accepted to be reasonable, fair, and just, and in such respects shall not be controverted therein until finally found otherwise in a direct action brought for that purpose in the manner prescribed by sections 6 and 7 of said act. So that your orator alleges that, unless the relief herein sought be granted, its failure to adopt and put into effect and use the unreasonably low and uncompensatory rates heretofore prescribed by said commission would subject it to a multiplicity of suits brought by shippers for the penalties provided in section 17 of said act; and that in such suits it would be deprived of the lawful defense that the rates and charges so prescribed by said commission were and are unreasonable; and, so concluded and deprived of lawful defense, it would be subjected to innumerable penalties, ranging from $125 to $500, in each case, and would be thereby denied the equal protection of the laws and be deprived of its property without due process of law, and in a proceeding wherein its liability was fixed in advance, contrary to the Constitution and laws of the United States and to the constitution and laws of the State of Texas. Your orator furthermore alleges that in such suits by individual shippers it would be deprived of the right to a trial by jury of the issue involved in the said, lawful defense, that said rates and charges were and are unreasonable, and that such deprivation of said right is and would be contrary to section 15, article 1 of the constitution of the State of Texas.

Your orator avers that section 6 of said act provides, that
234 any railroad company or other party at interest, dissatisfied with the decision of any rate, classification, rule, charge, order, act or regulation adopted by the commission, may file a petition setting forth the particular cause or causes of objection to such decision, rule, etc., in a court of competent jurisdiction in Travis county, Texas, against said commission as defendant; and section 7 provides, that in all trials under section 6 the burden of proof shall rest upon the plaintiff, who must show by clear and satisfactory evidence that the rates, regulations, orders, classifications, acts or charges complained of are unreasonable and unjust to them. Said sections 6 and 7 provide the only contingency (except in suits on behalf of the State for penalties) in which railway companies may contest or controvert the reasonableness of a rate announced by the commission, and the effect of said act (except as to such suits on behalf of the State) is to withdraw wholly from all railway companies subject to the operation of the act, including your orator, the right to make the defense that any charges, regulations or classifications of the commission are unreasonable, and (with said exceptions) limits the making of that issue to an affirmative proceeding directly instituted for that purpose in a single local court, wherein the burden of proof is fixed as above recited; and the effect of said act is to deprive railway companies subject to the operation thereof of the right to make a lawful defense under and subject to settled rules of evidence in any proceeding which may be instituted by individuals against it, thereby taking the property of said railway companies without due process of law, and denying to them the equal protection of the laws, contrary to the Constitution and laws of the United States, and especially section 1 of article 14 of the amendments to said Constitution, and to the constitution and laws of the State of Texas, and especially to sections 3 and 19 of article 1 of said constitution of Texas.

Your orator further alleges that the defense that any rate or charge is unreasonable cannot, under the provisions of said act, be made in any such suit by individuals until said court of Travis
235 county has found that such rate or charge is not reasonable, fair or just; and the effect of said act in this respect is that upon such finding by the Travis county court the defense that such rate is unreasonable, unfair or unjust, may only thereafter be made in suits instituted by individual shippers, so that, as your orator shows, the operation of said act is to deny the right to make such defense in such suits, by individual shippers, until there has been an adjudication upon such issue in a suit between other parties in the tribunal of Travis county, and thus the practical effect of said act is to deny the right of railway companies to make a lawful defense, pending the institution by said railway companies in a different tribunal and against other parties, of a suit for the purpose of directly making the issue involved in said defense, and of making such issue under the adverse conditions and the extraordinary and arbitrary presumptions and rules of evidence established by section 7 of said act. In the meantime innumerable judg-

ments may be recovered in suits by individuals, and said act provides no relief against such judgments, notwithstanding the said tribunal of Travis county may subsequently declare the rates and charges, for the violation of which said judgments of individuals may have been procured, were unfair, unreasonable and unjust.

Moreover, your orator, as it is advised and believes, alleges that the right pretended to be conferred by said act, of contesting in a court of competent jurisdiction of Travis county the reasonableness, fairness or justness of any rate, charge or act of the said commission, is without effect and without value to the railway companies or persons interested in the railways and properties subject to the operation of said act; for, as your orator is further advised and alleges, under the constitution of the State of Texas establishing the judicial system of said State and defining the jurisdiction of the several courts, there exists in Travis county no court of competent jurisdiction in the premises. And in this behalf your orator further alleges that the constitution of the State of Texas (arti-
236 cle V) prescribes a complete judicial system for said State, and the legislature of the State of Texas is without power or authority to add to or take from the jurisdiction of the several courts of said State, as defined by said constitution, or to create or constitute any court or judicial tribunal, or to invest any court created under or by virtue of the constitution of the State of Texas, or any body or tribunal constituted by legislative act, with any judicial powers or jurisdiction whatever. And your orator avers that under the limitations of jurisdiction prescribed by the said constitution of the State of Texas the courts of Travis county, in said State, and each and all of them, are wholly without jurisdiction and judicial power to entertain the petition of any railroad company or other party dissatisfied with the decision of rates, charges, etc., as provided in section 6 of said act of April 3, 1891, and said courts, and each and all of them, are without jurisdiction and judicial power to determine or adjudicate any of the matters purporting to be committed to them, or either of them, by said sections 6 and 7 of said act.

Your orator shows that, even if it should be held that a court of Travis county would have jurisdiction of such an action, the remedy provided thereby would be wholly inadequate, if, pending the litigation, the tariffs of said commission should be enforced, as provided in said act. And your orator shows that, under the practice of the State of Texas, the trial of such an action and appeal therein may be extended over a long period of time, and that a final and conclusive adjudication upon the reasonableness and justness of rates may not be obtained in a less time than one year from the institution of such an action, during which time your orator would suffer great and irreparable loss and injury under the enforcement of said tariffs or penalties, inasmuch as no provision is made in and by said act for restitution, in the event that it shall be finally held that the tariffs of said commission, or any of them, are unjust and unreasonable.

Sixth. Your orator further avers that the penalties de-
237 nounced by said act of April 3, 1891, for failure to comply

with any of the provisions thereof, or with any of the rules, regulations, charges or rates prescribed and fixed by said commission, are wholly immoderate, unreasonable and excessive, and bear no just relation to the causes or matters with respect to which they are denounced, and that said excessive penalties are, as your orator verily believes, prescribed by said act with the view and intention that the same shall operate as a threat and menace to it and to other railway companies subject to the operation of said act, to the end that they may be thereby compelled and coerced into the adoption of the rates and charges prescribed by said commission, whether or not the same shall be reasonable, fair and just. That the enforcement of the multiplied and excessive penalties prescribed by said act would result in serious loss and damage, and possible bankruptcy to railway companies subjected thereto, and the operation of said act in this respect is harsh, unreasonable and confiscatory, and your orator avers that said act constituting said railroad commission is, in this respect, contrary to and in violation of the constitution of the State of Texas.

Seventh. Your orator shows that under the fear and apprehension of the excessive, immoderate and multiplied fines, penalties and damages denounced and provided for in said act, and by reason of the innumerable suits therein and thereby authorized and provided for, and the vast cost and expense attending the defense thereof, and notwithstanding that it believes and here avers that the tariffs, charges and orders established by said commission are unfair, unjust and unreasonable, and notwithstanding your orator claims that the same cannot be made lawfully applicable to it, it has, under protest, put the same into effect upon its lines of railway.

Eighth. Your orator avers that its mortgage bonds and
238 stock were made and issued by it lawfully and in accordance with the powers and limitations conferred and prescribed by its charter. That it was not and is not competent for the legislature of the State of Texas, directly or through any instrumentality or agency by it created, to fix and establish such rates or charges for services by it performed as to affect or diminish its earnings and revenues or to affect or impair its present or ultimate ability to earn the interest upon the bonds, and in addition thereto a fair reward for the services by it performed; and therefore your orator avers that said act of April 3, 1891, and said commission's tariffs and regulations are, so far as they purport or are intended to apply to your orator and its business, void and inoperative and violative of the rights and exemptions secured to your orator by its charter.

Except as herein and hereby qualified your orator adopts and avers all the allegations contained in the said original bill of The Mercantile Trust Company, complainant, and asks that this averment be deemed and taken to be equivalent to the incorporation herein of all the said allegations, as so qualified, contained in said bill.

In consideration whereof, and for as much as your orator is remediless in the premises under the rules of common law, and can have adequate relief only in a court of equity, where matters of

this nature are properly cognizable and relievable, to the end, therefore, that the defendants hereinafter named may answer the several matters and things hereinbefore set forth as fully and particularly as if the same were herein again repeated and they were thereto interrogated; and that an injunction may issue out of this court restraining the said Reagan, McLean and Foster and the said Charles A. Culberson, and each of them, from instituting or authorizing or directing any others to institute any suit or suits, action or actions, against your orator for the recovery of any penalties under
239 and by virtue of any of the provisions of the act of the legislature of Texas, approved April 3d, 1871, and restraining all other individuals, persons or corporations now or hereafter claiming any right under and by virtue of the said commission law or said tariffs or either of them or both combined, or under and by virtue of the said tariffs or orders of the said commission or either of them, from bringing or instituting suit or suits against your orator for the recovery of any damages, overcharges, penalty or penalties under or by virtue of said commission law or any of its provisions, or under and by virtue of the said tariffs, orders or circulars of the said commission or any or either of them, or under and by virtue of the said commission law and the said tariffs, orders or circulars or any or either of them combined, and restraining the said railroad commission of Texas and said Reagan, McLean and Foster and each and all of them, from making, issuing or delivering to your orator, or causing to be promulgated, established or made effective against it, any further tariff or tariffs, circulars or orders, and from attempting so to do; and that in the meantime until the hearing hereof your orator may have a temporary restraining order embracing all of the relief herein prayed for, such restraining order to continue in force until the termination of the hearing for a writ of injunction, and that on final hearing of this cause it may have all injunctions herein prayed made perpetual, and that all tariffs, circulars and orders heretofore made and issued by said railroad commission of Texas or by said Reagan, McLean and Foster, acting or claiming to act as said railroad commission of Texas, and each of them, may be cancelled and declared to be null, void and of no effect by a decree of this court, and that a mandatory injunction may be issued to the said commission and said commissioners, and each of them, commanding them to recall and abolish the said tariffs, circulars and orders, and each of them; and that such orders and decrees as may be made under the original bill of complaint herein of the Mercantile Trust Company shall be
240 adapted to the protection of your orator in respect of the matters herein alleged, and that your orator may have such further and other relief as this case may require as well as all costs. May it please your honors to grant unto your orator a writ or writs of subpœna to be issued out of and under the seal of this honorable court, and directed to the defendants The Mercantile Trust Company, The Railroad Commission of Texas, John H. Reagan, L. L. Foster and William P. McLean and Charles A. Culberson, commanding said defendants and each of them to appear in this court at some certain

day to be therein named, and to answer the premises, but not under oath (answer under oath being expressly waived), and abide by and perform such decree as may be rendered herein.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
By EDW. GOULD, *First Vice-president.*
[L. S.] PERKINS, GILBERT & PERKINS,
Solicitors for Cross-complainant.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

Edwin Gould, being duly sworn, says that he is the first vice-president of The St. Louis Southwestern Railway Company of Texas, the complainant above named, and has been such first vice-
241 president for a year past; that he has read the foregoing cross-bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true; and, further, that the seal affixed to the said bill is the corporate seal of the complainant, and was affixed by him to said bill by authority of said complainant.

EDW. GOULD.

Sworn to and subscribed before me this 31st day of May, 1892.
E. A. JACKSON,
[L. S.] *Notary Public, New York County.*

242 In the Circuit Court of the United States, Western District of Texas, in the 5th Circuit. In Equity.

THE MERCANTILE TRUST CO., Trustee, Complainants, *vs.* THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS, and JOHN H. REAGAN *et al.*, Defendants.	No. —. Original Bill.
THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS, Complainants, *vs.* THE MERCANTILE TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.	Cross-bill.

To the honorable judges of said court:

The Mercantile Trust Company, trustee, complainant in the above-entitled cause, now amends its original bill herein filed as follows, to wit:

First. By adding at the bottom of page 20 of the said bill of complaint, after the first subdivision of the ninth paragraph in said bill, the words and figures following, to wit:

That there has been necessarily expended in cash in the construction and equipment of the lines of railway aforesaid owned and operated by the St. Louis Southwestern Railway Company of Texas more than $30,000 per mile of said road, and that the same could not now be reconstructed and replaced for less than $20,000 per mile; that the lines of railway of the St. Louis Southwestern Railway Company of Texas have at all times been operated as economically as practicable, and that its operating expenses have been at all times as reasonable and low in amount as they could be made by economical and judicious management, and that it has not been possible for said company to operate said road for less than it has been operated; that for the year ending June 30, 1891, there has been employed by said railway company ten general officers, who received during said year an average daily compensation of $9.29. Exclusive of its general officers, its employees received during said year an average daily compensation of $1.83, and for the year ending June 30th, 1892, it had eleven general officers, who during said year received an average daily compensation of $9.39, and all of its employees, excluding general officers, during said year received an average daily compensation of $1.81; that at all times the said railway company has secured the services of its officers and employees as cheaply as practicable and has employed no more than necessary, and that the above were fair and reasonable rates of pay; that at all times the said railway company has secured all supplies, material, and property of whatever character, used in the operation of its road, at the cheapest market price and at as low rates as same could be secured, and has secured and used no more than was actually necessary for the operation of its road; that your orator files herewith and makes part of this bill of complaint, marked, respectively, Exhibits "H" and "I," copies of the sworn reports made by the officers of said railway company to the railroad commission of Texas
243 for one month of the year ending June 30th, 1891, being the only month when said road was operated by said company, and for the year ending June 30th, 1892, on the forms prescribed by said commission which show its operating expenses in detail, each and every item of which was as reasonable in amount and as low as possible. Your orator alleges that the loss in revenue sustained by said company by the observance and application of the tariffs established by the railroad commission of the State of Texas as set forth in Exhibit "C" to the bill of complaint herein from the respective dates upon which each of said tariffs took effect until the 31st day of July, 1892, on freight actually moved by it to which said tariffs applied, amounted to $100,607.84; that the said loss is arrived at by taking each shipment of a commodity affected by the rates prescribed by said commission made by said company during the time that said rates were in effect and computing the amount which said company would have earned had it been allowed to charge the rates prevailing immediately prior to the time

when the commission rates were issued and which had been, with slight changes, prevailing for several years prior thereto, and deducting from the amount so arrived at the amount which said company did actually earn under the rates prescribed by the railroad commission; that all of said commission rates were not in effect during the year ending July 31st, 1892, and if they had been the losses of said company would have been greater than shown above and would have considerably exceeded the sum of $150,000.00; that each and all of the tariffs issued by said company putting into effect the rates of said commission were issued under protest, and there were printed thereon by said company the words following, to wit: "This tariff is issued by order of the railroad commission of Texas under protest, reserving the right to contest the same in the courts;" that said reductions made by said commission affected about 70% of the State tonnage of said company and about 60% of its entire tonnage; that the tariffs established by said commission made greater reductions upon the lines of road owned by said company than upon the average road by reason of its geographical location and of its hauls of freight being short hauls, and by reason of the competition of other lines at all principal stations on its lines of railway, and by reason of the fact that it had no lines reaching the gulf, and said reductions in the rates theretofore charged on the following-named commodities actually shipped were substantially as follows, to wit:

	Per cent.
On grain, average	28
On hay	12½
On salt	41
On lumber (State and interstate)	20
On cotton seed and its products	8 to 29
On hulls (under 30 miles)	10 to 50
Cotton in bales	10 to 25
Grain, flour, and salt (less than car lots)	36 to 65
Wood	5 to 21
Coal	4 to 55
Common brick	9 to 50
Fire-brick	35 to 87
Cement and plaster	20 to 43
Lime (in car-loads)	1 to 40
Live stock	7 to 50
Wool (State and interstate)	1 to 46
Pig-iron (in car-loads)	
244 Junk	4 to 33⅓
Iron roofing (in car-loads)	46 to 66
Iron roofing (less than car-loads)	54 to 72
Melons and vegetables	22 to 58½

That the decrease in the rates and revenues of said railway company made by said commission have not and will not cause any such increase in the tonnage or the business of said road as will in

any degree whatever make up or compensate for the loss in revenues caused by said reductions in rates.

That for the year ending June 30th, 1892, there was a decrease in the tonnage moved on said road as compared with the tonnage moved over the same road for the year ending June 30th, 1891; that said company, before and during the period when said commission tariffs were in effect, did, and now does, charge as high passenger rates as are allowed by the law of the State of Texas and derived and derives all the revenue possible from any and all other sources, including interstate and foreign traffic; that the divisions of through rates now and at all times heretofore enjoyed and received by said company on interstate and foreign commerce moving over two or more lines has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas which said company did or could derive under the rates fixed by said commission—that is to say, for hauling the freight the same distance or performing the same service said company received largely more revenues on business interchanged with interstate roads or on foreign or interstate business than it did or could receive on business interchanged under the rates of said commission with roads within the State when the said freight was moving between points within the State and subject to the rates of the said commission, and that the interstate rates of said company, as well as the interstate and foreign rates of all other lines doing an interstate and foreign business to and from Texas, now and at all times have been higher than the rates fixed for the same or corresponding distances by the said commission.

Second. Complainant reiterates each and every allegation in its bill of complaint and prays the court to allow this amendment to be filed, and further prays as in its original bill and for all other and further orders and equitable relief in the premises.

FARRAR, JONAS & KRUTTSCHNITT,
ALEXANDER & GREEN,
Solicitors for Complainant.

JOHN F. DILLON,
JOHN J. McCOOK,
E. B. KRUTTSCHNITT,
Of Counsel.

245 [Endorsed:] No. 188. U. S. circuit court, western district of Texas, at Austin. The Mercantile Trust Co., trustee, complainant, *vs.* The St. Louis Southwestern R'y Co. of Texas, John H. Reagan, & *als.* The St. Louis Southwestern R'y Co. of Texas, cross-complainant, *vs.* The Mercantile Trust Co., John H. Reagan, & *als.*, defendants. Amendment to bill of complaint. Filed Mar. 23, 1893. B. G. Duval, clerk.

246 In the Circuit Court of the United States, Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST CO., Trustee, Complainants, *vs.* THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS and JOHN H. REAGAN *et al.*, Defendants.	No. —.	Original Bill.
THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS, Complainants, *vs.* THE MERCANTILE TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.		Cross-bill.

To the honorable judges of said court:

The St. Louis Southwestern R'y Company of Tex., cross-complainant in the above-entitled cause, now amends its cross-bill herein filed as follows, to wit:

First. By adding at the close of folio 17 of the said cross-bill of def't Co. the words and figures following, to wit:

That there has been necessarily expended in cash in the construction and equipment of the lines of railway aforesaid owned and operated by the St. Louis Southwestern Railway Company of Texas more than $30,000 per mile of said road, and that the same could not now be reconstructed and replaced for less than $20,000 per mile; that the lines of railway of the St. Louis Southwestern Railway Company of Texas have at all times been operated as economically as practicable, and that its operating expenses have been at all times as reasonable and low in amount as they could be made by economical and judicious management, and that it has not been possible for said company to operate said road for less than it has been operated; that for the year ending June 30, 1891, there has been employed by said railway company ten general officers, who received during said year an average daily compensation of $9.29. Exclusive of its general officers its employees received during said year an average daily compensation of $1.83, and for the year ending June 30, 1892, it had eleven general officers who during said year received an average daily compensation of $9.39, and all of its employees, excluding general officers, during said year received an average daily compensation of $1.81; that at all times the said railway company has secured the services of its officers and employees as cheaply as practicable and has employed no more than necessary, and that the above were fair and reasonable rates of pay; that at all times the said railway company has secured all supplies, material, and property of whatever character used in the operation of its road at the cheapest market price and at as low rates as same could be secured and has secured and used no more than was actually necessary for the operation of its road; that your orator refers to and adopts as a part hereof respectively Exhibits "H" and "I" to

247 amended original bill, which are copies of its sworn reports made by its officers to the railroad commission of Texas for one month of the year ending June 30th, 1891, being the only month when said road was operated by your orator, and for the year ending June 30th, 1892, on the forms prescribed by said commission, which show its operating expenses in detail, each and every item of which was as reasonable in amount and as low as possible, all of which is adopted and plead as a part hereof.

Your orator alleges that the loss in revenue sustained by it by the observance and application of the tariffs established by the railroad commission of the State of Texas, as set forth in Exhibit "C" to the bill of complaint herein, from the respective dates upon which each of said tariffs took effect until the 31st day of July, 1892, on freight actually moved by it to which said tariffs applied amounted to $100,607.84; that the said loss is arrived at by taking each shipment of a commodity affected by the rates prescribed by said commission made by your orator during the time that said rates were in effect and computing the amount which your orator would have earned had it been allowed to charge the rates prevailing immediately prior to the time when the commission rates were issued, and which had been, with slight changes, prevailing for several years prior thereto, and deducting from the amount so arrived at the amount which your orator's company did actually earn under the rates prescribed by the railroad commission; that all of said commission rates were not in effect during the year ending July 31st, 1892, and if they had been the losses of your orator's company would have been greater than shown above and would have considerably exceeded the sum of $150,000.00; that each and all of the tariffs issued by your orator's company, putting into effect the rates of said commission, were issued under protest, and there were printed thereon by your orator's company the words following, to wit: "This tariff is issued by order of the railroad commission of Texas under protest, reserving the right to contest the same in the courts;" that said reductions made by said commission affected about 70% of the State tonnage of your orator's company and about 60% of its entire tonnage; that the tariffs established by said commission made greater reductions upon the lines of road owned by your orator than upon the average road, by reason of its geographical location and of its hauls of freight being short hauls and by reason of the competition of other lines at all principal stations on its lines of railway and by reason of the fact that it had no lines reaching the gulf, and said reductions in the rates theretofore charged on the following-named commodities actually shipped were substantially as follows, to wit:

	Per cent.
On grain, average	28
On hay	12½
On salt	41
On lumber (State and interstate)	20
On cotton seed and its products	8 to 29
On hulls (under 30 miles)	10 to 50

Cotton in bales	10 to 25
Grain, flour, and salt (less than car lots)	36 to 65
Wood	5 to 21
Coal	4 to 55
Common brick	9 to 50
Fire-brick	35 to 87
Cement and plaster	20 to 43
Lime (in car-loads)	1 to 40
248 Live stock	7 to 50
Wool (State and interstate)	1 to 46
Pig-iron (in car-loads)	
Junk	4 to 33⅓
Iron roofing in car-loads	46 to 66
Iron roofing (less than car-loads)	54 to 72
Melons and vegetables	22 to 58½

That the total gross earnings of your orator for the year ending June 30th, 1892, from all sources was $1,449,442.29; that the total gross earnings and revenue of your orator derived from transporting freight for the year ending June 30th, 1892, was $1,030,486.63; that the total gross operating expenses of your orator's line of railway for the year ending June 30th, 1892, was $1,472,527.00, excluding interest on first-mortgage bonds; that the interest on its first-mortgage bonds for the year ending June 30th, 1892, was $377,800.00, making a total of operating expenses and interest on first-mortgage bonds for said year of $1,850,327.00.

That there accrued against your orator as taxes on said property during said year the sum of $44,561.55, making a total of liabilities for said year of $1,894,888.55 and a total deficit for said year of $445,446.26, and a deficit of earnings as compared with operating expenses of $67,646.26.

That the decrease in the rates and revenues of your orator's railway made by said commission have not and will not cause any such increase in the tonnage of the business of your orator's road as will in any degree whatever make up or compensate for the loss in revenues caused by said reductions in rates.

That for the year ending June 30th, 1892, there was a decrease in the tonnage moved on your orator's road as compared with the tonnage moved over the same road for the year ending June 30th, 1891; that your orator's company, before and during the period when said commission tariffs were in effect, did and now does charge as high passenger rates as are allowed by the law of the State of Texas, and derived and derives all the revenue possible from any and all other sources, including interstate and foreign traffic; that the divisions of through rates now and at all times heretofore enjoyed and received by your orator's company on interstate and foreign commerce moving over two or more lines has exceeded and does greatly exceed the divisions of through rates on shipments moving between points within the State of Texas which your orator's company did or could derive under the rates fixed by said commission—that is to say, for hauling the freight the same distance

or performing the same service your orator's company received largely more revenues on business interchanged with interstate roads or on foreign or interstate business than it did or could receive on business interchanged under the rates of said commission with roads within the State when the said freight was moving between points within the State and subject to the rates of the said commission, and that your orator's interstate rates as well as the interstate and foreign rates of all other lines doing an interstate and foreign business to and from Texas now and at all times have been higher than the rates fixed for the same or corresponding distances by the said commission.

249 Second. Cross-complainant reiterates each and every allegation in its cross-bill of complaint and prays the court to allow this amendment to be filed, and further prays as in its original cross-bill and for all other and further orders and equitable relief in the premises.

PERKINS, GILBERT & PERKINS,
Solicitors for Def't & Cross-complainant
St. Louis Southwestern Ry Co. of Tx.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel.

250 [Endorsed:] No. 188. Orig. bill: Mercantile Trust Co., complainant, *vs.* St. Louis Southwestern R'y Co. of Texas, Jno. H. Reagan, *et al.*, def'ts. Cross-bill: St. Louis Southwestern R'y of Tex., cross-compl't, *vs.* Mercantile Trust Co., Jno. H. Reagan, *et al.* Amendment to cross-bill. Filed Mar. 23, 1893. B. G. Duval, clerk, by D. H. Hart, d'y.

251 In the United States Circuit Court for the Western District of Texas, at Austin.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
v.
ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et al.*, Defendants. } No. 188.

The defendants, John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson, respectfully ask leave of the court to withdraw their answers heretofore filed by them in this cause to the original bill filed by complainant and the cross-bill filed by the defendant railway company, and to permit them to file a demurrer to said original complaint and cross-bill, so that the same may be considered as if no answer had been filed to said original and cross action, and that the demurrer was filed on the rule day, to which the subpœnas were returnable.

The purpose of this motion is to raise in a simple and direct manner the questions of law involved in this cause, and it has no other object in view. No delay will be occasioned thereby and no injury to complainant or cross-complainant, inasmuch as the defend-

ants offer to proceed immediately with the consideration of the demurrer, and if the same be overruled, leave will not be asked to file answers to said original and cross actions, but judgment may be rendered upon said demurrer, and failure of defendants to answer the bill and cross-bill, from which judgment defendants will appeal.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for Defendants.

(Endorsed:) No. 188. The Mercantile Trust Company, trustee, complainant, *v.* The St. Louis Southwestern Railway Company of Texas, John H. Reagan, *et al.*, defendants. Motion to withdraw answers and file a demurrer. Filed March 20, 1893. B. G. Duval, clerk, by D. H. Hart, deputy.

252 AUSTIN, TEXAS, *March* 23, 1893.

United States Circuit Court, Western District of Texas, at Austin.
In Equity.

MERCANTILE TRUST COMPANY, Trustee, *vs.* THE TYLER SOUTHEASTERN RAILWAY COMPANY *et als.*	189. Original Bill.
THE TYLER SOUTHEASTERN RAILWAY COMPANY *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et als.*	Cross-bill.
THE MERCANTILE TRUST COMPANY, Trustee, *vs.* THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS *et als.*	188. Original Bill.
THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS *vs.* THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et als.*	Cross-bill.
THE MERCANTILE TRUST COMPANY, Trustee, *vs.* THE TEXAS & PACIFIC RAILWAY CO., JOHN H. REAGAN, *et als.*	186. Original Bill.
253 THE TEXAS & PACIFIC RAILWAY CO. *vs.* THE MERCANTILE TRUST CO., JOHN H. REAGAN, *et als.*	Cross-bill.

THE FARMERS' LOAN & TRUST CO., Trustee, *vs.* THE GULF, COLORADO & SANTA FÉ R'Y CO. *et als.*	190.	Original Bill.
THE GULF, COLORADO & SANTA FÉ R'Y CO. *vs.* THE FARMERS' LOAN & TRUST CO., JOHN H. REAGAN, *et als.*		Cross-bill.
THE FARMERS' LOAN & TRUST CO., Trustee, *vs.* THE INTERNATIONAL & GREAT NORTHERN RAILROAD CO. *et als.*	187.	Original Bill.
THE INTERNATIONAL & GREAT NORTHERN RAILROAD CO. *vs.* THE FARMERS' LOAN & TRUST CO., JOHN H. REAGAN, *et als.*		Cross-bill.

These causes came on this day to be heard on the motions of defendants John H. Reagan, L. L. Foster, William P. McLean, and Charles A. Culberson for leave to withdraw their answers to the bills of complaint and cross-bills in the above-entitled causes and for leave to file demurrers to said bills and cross-bills. Whereupon and on consideration whereof, complainants and cross-complainants consenting to the granting of said leave, subject to terms as
254 hereinafter set forth, and said defendants not objecting to said terms—

It is ordered, adjudged, and decreed that said defendants be, and they are hereby, allowed to withdraw their said answers to said bills and cross-bills in said causes and to file demurrers thereto upon the terms and conditions following, viz:

(1.) That said defendants do pay all costs of taking testimony and depositions in said causes, against them to be taxed, and it is hereby ordered that execution do issue therefor.

(2.) That said complainants and cross-complainants be, and they are hereby, allowed to amend their respective bills and cross-bills before said demurrers be filed, and in such manner as they may be advised.

March 23, 1893.

A. P. McCORMICK,
Circuit Judge.

By consent of all parties in the above causes, it is hereby ordered that the exhibits marked "H" and "I" to the original bills and cross-bills shall be made a part of the records in these causes, the originals, without copying the same, to accompany the records as a part of the same to the Supreme Court of the United States.

March 23, 1893.

A. P. McCORMICK, *Cir. Judge.*

255 [Endorsed:] Copy of order granting leave to withdraw answers and file demurrers.

256 MERCANTILE TRUST COMPANY
vs.
ST. LOUIS SOUTHWESTERN RAILWAY CO., JNO. H. REAGAN, *et als.* } No. 188.

Now comes complainant and sets down the above cause for hearing on bill and answer as to the defendant The St. Louis Southwestern Railway Company.

March 23, 1893.

Attest:

B. DU VAL, *Clerk*,
By D. H. HART, *Deputy*.

[Endorsed:] Rule setting down cause on bill and answer.

257 In the United States Circuit Court for the Western District of Texas, at Austin.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY of Texas, John H. Reagan, *et al.*, Defendants. } In Equity. No. 188.

The Demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to Complainant's Bill as Amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, demur to the bill of complaint and for causes of demurrer show:

That said complainant hath not in and by said bill, made or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore, these defendants pray judgment of this honorable court whether they shall be compelled to further answer and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of the said bill, defendants say:

(1.) That it does not appear from the allegations of said bill that the complainants have any interest in the subject-matter of the complaint and in equity cannot demand the relief sought
258 in the prayer of said bill. Because the injury complained of is too remote, and the bill shows no legal damage to complainant, because the relief asked by complainant in effect deprives the railway company of the management of its own affairs and substitutes the judgment of the court for that of the directory of the railway company.

(2.) Because it appeareth from the face of said bill that complainants have a plain and adequate remedy at law.

(3.) Because it appeareth from the face of the bill of complaint that the suit is against the State of Texas and consequently obnoxious to the 11th amendment of the Constitution of the United States.

(4.) Because it appeareth from the face of the bill of complaint that complainant seeks to enjoin the judgment of a special tribunal of the State of Texas, said tribunal having jurisdiction under the constitution and laws of Texas to try and determine the special matters sought to be enjoined, and from which judgment a plain and adequate remedy by appeal had been granted to all parties interested by the laws of Texas.

(5.) Because it appears from the bill that complainants seek to stay judicial proceedings when necessary to be brought under the laws and in the name of the State of Texas in the courts of Texas.

(6.) Because it appears upon the face of said bill that the complainant seeks to enjoin the attorney general of the State of Texas from bringing any action or enforcing penalties against the defendant railway company, provided by law to enforce obedience upon the part of the defendant company to the laws of the State of Texas.

(7.) Because it appears from the face of the bill that section 5, of the act of the State of Texas, known as the railroad commission act and set forth in the bill, of which complainant complains as unconstitutional because depriving it of due process of law, is not obnoxious as alleged to the fourteenth amendment to the Constitution of the United States, but that the said section taken in connection with other sections of the said railroad commission act is a valid provision and constitutional.

(8.) Because it appears from the face of the bill that section 5 of the railroad commission act, if obnoxious to the Constitution of the United States, does not affect the law as a whole and said commission law is valid and constitutional though section 5 be de-
259 clared unconstitutional and void, and the relief prayed for by complainant to enjoin the railroad commission of the State of Texas from ever hereafter making any rates or issuing or delivering any further tariffs, orders or circulars or the relief sought by complainant's bill enjoining all persons hereafter from claiming any right under said law, cannot in equity be granted by this court.

(9.) Because it appears that the commission law, as set forth in complainant's bill and upon the invalidity of which the whole of the relief asked by complainant is based, is a valid and constitutional law and the court has no jurisdiction in this case because the law being constitutional, no Federal question is involved nor does it appear that said cause arises under the Constitution or any law of the United States.

(10.) Because it appears from the bill that the allegations of the unreasonableness of rates fixed by the State commission and of which it complains and seeks relief by injunction is based upon the

operating expenses, the interest on the bonded indebtedness and the stock issue of the defendant railway, which complainant alleges the defendant railway should be permitted to earn. That said allegation setting up said claim as a basis of the reasonableness of the rate is insufficient in equity upon which to grant the relief prayed for.

(11.) That to so much of the allegation of complainant's bill as sets up the invalidity of circular 34, issued by the railroad commission of the State of Texas, which is made a part of said bill, defendants say the same is insufficient in that it does not show that the requirements contained in said circular are unreasonable regulations imposed on defendant company. Nor does it interfere with interstate commerce as alleged.

(12.) That so much of the allegations in complainant's bill as seek to attack the validity of the law creating the railroad commission and prescribing its powers because of combining judicial legislation and executive powers, are insufficient in law or equity upon which to base the relief prayed for.

(13.) The defendants further demurring, say that this court has no jurisdiction because it appears from the bill and the cross-bill and record generally, that there is a fraudulent combination between complainant and the defendant railroad company to
260 obtain jurisdiction in this court by creating a diversity of citizenship in order that the defendant company, which is a domestic corporation chartered under the laws of Texas, should be enabled to apply for affirmative relief by means of the cross-bill filed by it against these defendants.

(14.) Defendants further demurring say that so much of said bill as sets up want of notice of the time and place of fixing rates by the railroad commission of Texas, is insufficient in law or equity, because it appears by the bill that a notice was given before fixing rates and that defendant railroad company did appear both by the traffic agent and counsel and discuss the rates prior to their being fixed by the commission. And further demurring, defendants say that the want of notice complained of is under a law of the State of Texas and no Federal question arises giving this court jurisdiction to determine its sufficiency.

(15.) Defendants further demurring, say that so much of complainant's bill as sets up that the commission law of Texas is obnoxious to the 14th amendment in not providing due process of law or depriving the defendant railroad of the equal protection of the law, is insufficient in this, that said objections are not shown by any allegations in said bill to appear upon the face of the law complained of by said complainant and there exists any Federal question arising upon the face of said law by which this court can take jurisdiction.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, the defendants pray the judgment of the court whether they shall be compelled to make answer to such

parts of said bill as are herein specifically demurred to and prays to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

C. A. CULBERSON.

261 UNITED STATES OF AMERICA, }
Western District of Texas. }

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me, this the 23rd day of March, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

(Endorsed:) No. 188. In the United States circuit court for the western district of Texas, at Austin. The Mercantile Trust Company, trustee, complainants, *vs.* The St. Louis Southwestern Railway Company of Texas, John H. Reagan, *et al.*, defendants. The demurrer of John H. Reagan, W. P. McLean, L. L. Foster and C. A. Culberson. Filed March 23, 1893. B. G. Duval, clerk, by D. H. Hart, deputy.

262 & 263 In the United States Circuit Court for the Western District of Texas, at Austin. In Equity.

THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS, Cross-complainant,
vs.
THE MERCANTILE TRUST COMPANY, JOHN H. REAGAN, *et al.*, Defendants.

The demurrer of John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill of above-named cross-complainant as amended.

These defendants, by way of protestation, not confessing or acknowledging all or any of the matters and things in the said cross-bill of said cross-complainant contained to be true in such manner and form as the same are therein set forth and alleged, demur to the said cross-bill and for causes of demurrer show:

That said cross-complainant hath not, in and by said bill made

or stated such a cause of action as doth or ought to entitle it to any such relief as is thereby sought and prayed for against these defendants. Wherefore these defendants pray judgment of this honorable court whether they shall be compelled to further answer, and pray to be dismissed with their costs.

And for specific causes of demurrer to the sufficiency of the various allegations of said cross-bill, defendants say:

(1.) That it appears from the allegations of the original bill in this cause that the same cannot be maintained, and said original bill falling, said cross-bill must fall with it. The cross-bill cannot be maintained without the main bill to support it.

(2.) For further grounds of special demurrer to said
264–268 cross-bill, defendants adopt the special demurrers interposed by them in this cause to the original bill, numbered from two to fifteen, inclusive.

Wherefore, and for divers other errors and imperfections appearing in the said bill of complaint, defendants pray the judgment of the court whether they shall be compelled to make answer to such parts of said cross-bill as are herein specifically demurred to, and pray to be dismissed with their costs in this behalf expended.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
Solicitors for said Defendants.

I, C. A. Culberson, counsel for the defendants in the above cause, do hereby certify that the foregoing demurrer to the bill of complaint is in my opinion well founded in law.

C. A. CULBERSON.

UNITED STATES OF AMERICA, }
Western District of Texas. }

I, C. A. Culberson, one of the defendants in the above cause, being duly sworn, do say that the foregoing demurrer to the bill of complaint is not interposed for purposes of delay.

C. A. CULBERSON.

Subscribed and sworn to before me this the 23d day of March, 1893.

B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

(Endorsed:) No. 188. In the U. S. circuit court for the western district of Texas, at Austin. The St. Louis Southwestern Railway Company of Texas, cross-complainant, against The Mercantile Trust Company, John. H. Reagan, *et al.*, defendants. The demurrer of John. H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson to the cross-bill. Filed March 23, 1893. B. G. Duval, clerk, by D. H. Hart, deputy.

269 MERCANTILE TRUST COMPANY.
vs.
ST. LOUIS SOUTHWESTERN RAILWAY CO., JNO. H. REAGAN, *et al.* } No. 188.

Now comes complainant, through Messrs. Farrar, Jones & Kruttschnitt, its solicitors, and sets down the demurrer of defendants Jno. H. Reagan, L. L. Foster, Wm. P. McLean, and Charles A. Culberson to be argued.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

[Endorsed:] Rule setting down demurrer to bill of complaint for argument.

270 ST. LOUIS SOUTHWESTERN RAILWAY CO.
vs.
MERCANTILE TRUST CO., JNO. H. REAGAN, *et als.* } No. 188. Cross-bill.

Now comes cross-complainant, The St. Louis Southwestern Railway Company of Texas, through E. B. Perkins, Esq., its solicitor of record, and sets down the demurrer of John H. Reagan, William P. McLean, L. L. Foster, and Charles A. Culberson to the cross-bill herein for argument.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

[Endorsed:] Order setting down demurrer to cross-bill for argument.

271 MERCANTILE TRUST CO.
vs.
ST. LOUIS SOUTHWESTERN R'Y CO., JNO. H. REAGAN, *et al.* } No. 188.

Now come defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson, defendants in the above-entitled cause, through Charles A. Culberson, their solicitor of record herein, and decline further to answer the bill of complaint as amended or cross-bill as amended in the above cause, stand upon their demurrers, and submit said cause to the court for a final decree.

March 23, 1893.

Attest: B. G. DUVAL, *Clerk*,
By D. H. HART, *Deputy*.

[Endorsed:] Rule declining to further answer bill and submitting cause for final decree.

272 In the Circuit Court of the United States, Fifth Circuit, Western District of Texas. In Equity.

THE MERCANTILE TRUST CO., Trustee, Complainants,
vs.
THE ST. LOUIS SOUTHWESTERN R'Y CO. of Texas and John H. Reagan *et al.*, Defendants.
No. 188. Original Bill.

THE ST. LOUIS SOUTHWESTERN R'Y CO. OF TEXAS, Complainants,
vs.
THE MERCANTILE TRUST CO., Trustee, and JOHN H. REAGAN *et al.*, Defendants.
Cross-bill.

This cause having been set down for final hearing on the pleadings and evidence and being called for hearing thereon, the defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson presented their motion, on file herein, for leave to withdraw their answers and file demurrers, which motion was granted, conditioned upon the said defendants paying all costs of taking depositions and evidence herein against them to be taxed and for which execution may issue and on condition that the complainant and cross-complainant have leave to amend before the filing of the demurrers of the said defendants, which leave was granted, and whereupon said amendments were filed and the demurrers of the said defendants were filed to the original bill of complaint and cross-bill in this cause, as also to all amendments thereto, and were, by complainant and cross-complainant, set down for argument by consent, and were by all parties forthwith submitted; and thereupon, in consideration thereof,

273 it was ordered, adjudged, and decreed that said demurrers be, and the same are hereby, overruled, and the defendants John H. Reagan, Wm. P. McLean, L. L. Foster, and Charles A. Culberson having entered of record their refusal to make further answer and the fact that they stood upon their demurrers and all parties submitting the cause for final decree, it is now, upon consideration thereof, ordered, adjudged, and decreed that the bill of complaint, as amended, and the cross-bill of complaint, as amended in the above-entitled cause, be, and the same are hereby, sustained and taken for confessed; and the said cause coming on further to be heard upon the bill of complaint herein, as amended, and upon the answer of the defendant railway company thereto, confessing the same, it is further ordered, adjudged, and decreed as follows, to wit:

First. That the injunctions heretofore issued in this cause be, and the same are hereby, made perpetual; and accordingly—

Second. That defendant be, and it is hereby, perpetually enjoined, restrained, and prohibited from putting or continuing in effect tariffs, circulars, or orders of the railroad commission of Texas, or either or any of them, as described in the bill of complaint herein and in "Exhibit C" thereto and therewith filed, and from charging or

continuing to charge the rates specified in said tariffs, circulars, or orders or either or any of them.

Third. It is further ordered, adjudged, and decreed that the defendants The Railroad Commission of Texas and the defendants John H. Reagan, Wm. P. McLean, and L. L. Foster, acting as the railroad commission of Texas, and their successors in office, and the defendant Charles A. Culberson, acting as attorney general of the State of Texas, and his successors in office, be, and
274 they are hereby, perpetually enjoined, restrained, and prohibited from instituting or authorizing or directing any suit or suits, action or actions, against the defendant railway company for the recovery of any penalties under and by virtue of the provisions of the act of the legislature of the State of Texas approved April 3rd, 1891, and fully described in the bill of complaint, or under or by virtue of any of the said tariffs, orders, or circulars of the said railroad commission of Texas, or any or either of them, or under or by virtue of the said act and the said tariffs, orders, or circulars of said railroad commission, or any or either of them combined, and said defendants, Reagan, McLean, and Foster, and the Railroad Commission of Texas, are further specially enjoined from certifying any copy or copies of any of said orders, tariffs, or circulars, or from delivering or causing or permitting to be delivered certified copies of any of said orders, tariffs, or circulars to the said Culberson or any other party, and from furnishing the said Culberson or any other party any information of any character for the purpose of inducing, enabling, or aiding him or any other party to institute or prosecute any suit or suits against the said defendant railway company for the recovery of any penalty or penalties under the said act.

Fourth. It is further ordered, adjudged, and decreed that the said railroad commission of Texas and the said Reagan, McLean, and Foster be perpetually enjoined, restrained, and prohibited from making, issuing, or delivering to the said railway company or causing to be made, issued, or delivered to it any further tariff or tariffs, circular or circulars, order or orders.

Fifth. It is further ordered, adjudged, and decreed that all other individuals, persons, or corporations be, and they are hereby, perpetually enjoined, restrained, and prohibited from institut-
275 ing or prosecuting any suit or suits against the said railway company for the recovery of any damages, overcharges, penalty, or penalties under or by virtue of the said act or any of its provisions or under and by virtue of the said tariffs, orders, or circulars of the said railroad commission of Texas or any or either of them or under and by virtue of the said act and the said tariffs, orders, and circulars or any or either of them combined.

Sixth. It is further ordered, adjudged, and decreed that all rates, tariffs, circulars, and orders heretofore made and issued by said commission, and fully described in "Exhibit C" to the bill of complaint herein, be, and they are hereby, declared to be unreasonable, unfair, and unjust as to complainant and cross-complainant, and

they are hereby cancelled and declared to be null, void, and of no effect.

Seventh. It is further ordered, adjudged, and decreed that all costs herein be taxed against said defendants Reagan, McLean, Culberson, Foster, and The Railroad Commission of Texas, and that execution may issue therefor.

A. P. McCORMICK, *Cir. Judge.*

Austin, Tex., March 23d, 1893.

276 [Endorsed:] No. 188. U. S. circuit court, western district of Texas, at Austin. The Mercantile Trust Co., trustee, *vs.* The St. Louis Southwestern R'y Co. of Texas, John H. Reagan, *et als.* The St. Louis Southwestern Railway Co., cross-complainants, *v.* The Mercantile Trust Co., John H. Reagan, & *als.*, defendants. Final decree. M'ch 23, '93, filed & entered. B. G. Duval, cl'k, by D. H. Hart, d'y.

276½–301 In the United States Circuit Court for the Western District of Texas, in the Fifth Circuit. In Equity.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE TEXAS AND PACIFIC RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants. } No. 186.

THE FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE INTERNATIONAL AND GREAT NORTHERN RAILROAD Company, Thomas M. Campbell, John H. Reagan, *et als.*, Defendants. } No. 187.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 188.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
against
THE TYLER SOUTHEASTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et als.*, Defendants. } No. 189.

FARMERS' LOAN AND TRUST COMPANY, Trustee, Complainant,
against
THE GULF, COLORADO & SANTA FÉ RAILWAY COMPANY, JOHN H. REAGAN, *et als.*, Defendants. } No. 190.

302 In the Supreme Court of the United States.

THE MERCANTILE TRUST COMPANY, Trustee,
against
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, and C. A. CULBERSON.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, Cross-complainant,
against
THE MERCANTILE TRUST COMPANY, Trustee; JOHN H. REAGAN, W. P. McLEAN, L. L. FOSTER, and C. A. CULBERSON.

The appellants assign the following errors in this case:

1. The court erred in entertaining this suit and entering the decree because the same as to the attorney general of Texas and the railroad commission is in effect a suit against the State of Texas and inhibited by the XI amendment to the Constitution of the United States.

2. The court erred in rendering the decree against appellants because the act of the legislature of the State of Texas creating the railroad commission of Texas, approved April 3rd, 1891, is in all respects valid and constitutional.

3. The court erred in rendered the decree against appellants in so far as it inhibited the attorney general from instituting suits by authority of and in the name of the State of Texas to enforce said law and to recover the penalties therein provided for.

4. The court erred in rendering the decree against the appellants, The Railroad Commission, prohibiting said commission from hereafter adopting and promulgating any freight rates, because if sections 5, 6, and 7 of the act approved April 3rd, 1891, or either of them are void the remainder of the law is valid and constitutional.

5. The court erred in entertaining this suit and entering the decree against appellants because whether the rates fixed by the railroad commission of Texas are unreasonable is a legislative and not a judicial question and may not be inquired into except in the manner provided by said act approved April 3rd, 1891.

6. The court erred in entering the decree against appellants because the measure of a reasonable rate, as alleged in the complaint and cross-complaint, is not the legal measure or test thereof.

7. The court erred in rendering the decree against appellants because, as alleged in the complaint and cross-complaint, the rates fixed by the commission are just and reasonable.

C. A. CULBERSON,
HENRY C. COKE,
W. S. SIMPKINS,
Solicitors for Appellants.

(Endorsed:) # 188. The Mercantile Trust Co., trustee, *vs.* The St. Louis Southwestern Railway Company, John H. Reagan, W. P. McLean, L. L. Foster, & C. A. Culberson. The St. Louis Southwestern

Railway Co., cross-complainant, *vs.* The Mercantile Trust Co., John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson. Assignment of errors. Filed March 7, 1894. D. H. Hart, clerk.

303 In the United States Circuit Court for the Western District of Texas, at Austin.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
v.
THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, JOHN H. REAGAN, *et al.*, Defendants. } No. 188.

Your petitioners, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, defendants in the above-entitled cause, would respectfully represent and show that in said cause pending in the United States circuit court in and for the western district of Texas, at Austin, there was entered on the 23rd day of March, 1893, in said court, a final decree to the prejudice and injury of your petitioners; which said decree is erroneous and inequitable in many particulars.

Wherefore, in order that your petitioners may obtain relief in the premises and have opportunity to show the errors complained of, petitioners pray that they may be allowed an appeal in said cause to the Supreme Court of the United States, and that the proper orders touching the security required of them, if any, may be made.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMPKINS,
Solicitors for Defendants.

The above application for appeal to the Supreme Court of the United States is on this day, to wit, March 2nd, 1894, allowed as prayed for upon defendants entering into bond, within the time and conditioned as the law requires, in the sum of $500.00, payable to complainant and cross-complainant.

T. S. MAXEY, *Judge.*

(Endorsed:) No. 188. The Mercantile Trust Company, trustee, complainant, *v.* The St. Louis Southwestern Railway Company of Texas, John H. Reagan, *et al.*, defendants. Application for appeal. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, deputy.

304–307 Circuit Court of the United States of America for the Western District of Texas, in the 5th Circuit.

THE MERCANTILE TRUST COMPANY, Trustee, Complainant,
vs.
THE ST. LOUIS SOUTHWESTERN R'Y CO., JOHN H. REAGAN, *et al.*, Defendants.

THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS, Cross-compl't,
vs.
THE MERCANTILE TRUST COMPANY, Trustee; JOHN H. REAGAN, *et al.*, Defendants.

Know all men by these presents that we, John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, of the city of Austin, Travis county, Texas, and H. G. Askew and E. D. True, are held and firmly bound unto the above-named Mercantile Trust Company and the St. Louis Southwestern R'y Co. of Texas in the sum of five hundred dollars ($500), to be paid to the said Mercantile Trust Company and St. Louis Southwestern R'y Co. of Texas; for the payment of which, well and truly to be made, we bind ourselves and each of us and our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 2nd day of March, in the year of our Lord eighteen-hundred and ninety-four.

Whereas the above-named John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson have prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit on March 23, 1893, by the judge of the circuit court of the United States for the western district of Texas:

Now, therefore, the condition of this obligation is such that if the above-named John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson shall prosecute said appeal to effect and answer all damages and costs if they fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN H. REAGAN,
W. P. McLEAN,
L. L. FOSTER,
C. A. CULBERSON,
By C. A. CULBERSON, *Solicitor.*
H. G. ASKEW, *Surety.*
E. D. TRUE, *Surety.*

The foregoing bond is approved this the 2nd day of March, A. D. 1894.

T. S. MAXEY, *Judge.*

(Endorsed:) #188. The Mercantile Trust Co., trustee, *vs.* The St. Louis Southwestern Railway Company, John H. Reagan, *et al.* The St. Louis Southwestern R'y Co., cross-complainant, *vs.* The Mercantile Trust Co., John H. Reagan, *et al.* Bond on appeal. Filed March 7, 1894. D. H. Hart, clerk, by O. H. Millican, d'y.

308 In the Supreme Court of the United States, October Term, 1893.

JNO. H. REAGAN & *als.*
vs.
MERCANTILE TRUST CO., Trustee, & THE ST. LOUIS S. W. RY. CO. OF TEXAS. } No. 1168.

In the above cause it is stipulated that the following portions of the record be omitted in printing, viz:

(1.) Exhibits B & C to bill of complaint.
(2.) Pp. 265, 266, 267, 268.
(2*a*.) Pages 277 to 301.
(3.) " 305, 306, 307.
(4.) Following pages of Exhibits H & I:

Exhibit H.	Exhibit I.
2–21, inclusive.	pp. 2–21, inclusive.
24–27, "	24–27, "
32, 33.	32, 33.
36–41, "	36–41. "
46, 47.	52–57, "
52–57, "	66–69, "
66, 67.	72–83, "
70–83, "	

Exhibits B & C and the opinion of the lower court are identical with same exhibits and opinion in suit No. 928, submitted simultaneously herewith, and to which record reference is hereby made.

E. B. KRUTTSCHNITT,
Solicitor for Complainant.
W. S. PIERCE,
Solicitor for Cross-complainant,
By E. B. KRUTTSCHNITT.
C. A. CULBERSON,
For Appellants.

309 [Endorsed:] Case No. 15,552. Supreme Court U. S., October term, 1893. Term No., 1168. John H. Reagan *et al.*, app'ts, *vs.* The Mercantile Trust Co. *et al.* Stipulation to omit parts of record in printing. Filed April 5, 1894.

310 "EXHIBIT H."

ANNUAL REPORT OF THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS TO THE RAILROAD COMMISSIONERS OF THE STATE OF TEXAS FOR THE YEAR ENDING JUNE 30, 1891. FILED MARCH 23, 1893. B. G. DUVAL, CLERK, BY D. H. HART, DEPUTY.

310 (22) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 22," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Recapitulation of Funded Debt.—Under this head should be given the totals of the classes of debt returned on page 19, except that under "miscellaneous obligations," should be included "equipment trust obligations," as returned on page 21. The total of accrued interest here given is the amount to be carried to page 31 (or 33), as "interest on funded debt accrued."

Receiver's Certificates.—It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

Current Assets and Liabilities.—Under "assets" it is desired that all assets should be returned which, in the ordinary operation of the property, may be applied to the payment of current liabilities, according to following instructions:

Cash.—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable.—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents.—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances.—State the amount due from other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals.—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets.—State the value of other proper cash assets, if any, naming same. Do not include "materials and supplies." "Stocks" or "bonds owned" should not be returned under "current assets," but as provided for on page 37 or 39. For "liabilities," the following instructions should be observed:

Receiver's Certificates.—Enter the total from the table on opposite page (23).

Loans and Bills Payable.—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts.—State the amount of audited vouchers and of accounts applying to the business up to and including June 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries.—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances.—State the amount due to other companies (after deducting the amount due from other companies) on operations up to and including June 30.

Dividends not Called for.—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid.—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rents Due July 1.—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscellaneous.—State any other unfunded indebtedness not previously specified.

Explanatory Remarks.

*See note on page 18.

310 (23)

Recapitulation of Funded Debt.

Class of debt.	Amount issued.	Amount outstanding.	Interest.	
			Amount accrued during year.	Amount paid during year.
Mortgage bonds—page 19	9,435,000 00	9,445,000 00	31,483 34	
Miscellaneous obligations—page 21				
Income bonds—page 19	4,722,500 00	4,722,500 00	0 00	
Total	14,167,500 00	14,167,500 00	31,483 34	*

Receiver's Certificates.

Date issued.	Amount issued.	Amount outstanding.	Principal.		Interest.		Rate.
			Amount paid during year.	Amount funded or otherwise disposed of.	Amount accrued during year.	Amount paid during year.	
			None.				
Total							

Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities.		Current liabilities accrued to and including June 30, 1891.	
Cash	45,293 66	Receiver's certificates	0 00
Bills receivable	636 40	Loans and bills payable	60,261 30
Due from agents	24,022 68	Audited vouchers and accounts	118,954 04
Net traffic balances due from other companies	0 00	Wages and salaries	158,925 96
Due from solvent companies and individuals	267,330 59	Net traffic balances due to other companies	0 00
Other cash assets (excluding "materials and supplies")*	0 00	Dividends not called for	0 00
		Matured interest coupons unpaid (including coupons due July 1)	
		Rents due July 1	0 00
		Miscellaneous	0 00
Balance—current liabilities	00,947 97	Balance—cash assets	
Total	338,141 30	Total	338,141 30

*Materials and supplies on hand, $88,220 80. (See general balance-sheet—page 10.)

310 (28) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 28," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz: "Operating expenses," in which case the total should be distributed in said account on pages 43 and 45; "income account," in which case the total should be carried to appropriate item on page 31 (or 33); this column, however, is intended for the use of those roads only with which it is now (or will hereafter be) a custom to charge permanent improvements, wholly or in part, to "income account;" and construction or equipment account. Under the caption "total cost to June 30, 1891," there should be entered the amounts returned as "total cost to June 30, 1891," plus the amounts "charged to construction or equipment." It is these totals that should be returned on the "general balance-sheet," page 49, against the items "cost of road" and "cost of equipment."

Explanatory Remarks.

310 (29) *Cost of Road, Equipment, and Permanent Improvements.*

Item.	Expenditures during year.			Total cost to June 1st, 1891.	Total cost to June 30, 1891.	Cost per mile.
	Included in operating expenses.	Not included in operating expenses.				
		Charged to income account as permanent improvements.	Charged to construction or equipment.			
Construction:						
Right of way				Cannot give cost of construction and equipment separately. Total cost is as follows:		
Other real estate						
Fences						
Grading and bridge and culvert masonry						
Bridges and trestles						
Rails						
Ties						
Other superstructure						
Buildings, furniture and fixtures						
Shop machinery and tools						
Engineering expenses						
Interest during construction						
Discount on securities sold for construction						
Telegraph line						
Wharfing, etc						
Sidings and yard extensions						
Terminal facilities and elevators						
Road built by contract						
Purchase of constructed road						
Other items						
				First-mortgage bond		9,445,000 00
				2d mtg. income bond		4,722,500 00
				Capital stock		2,500,000 00
				Total		16,667,500 00
Total construction	0 00	0 00	0 00			
Equipment:						
Locomotives						
Passenger cars						
Sleeping, parlor and dining cars						
Baggage, express and postal cars						
Combination cars						
Freight cars						
Other cars of all classes						
Floating equipment						
Total equipment	0 00	0 00	0 00			
Grand total cost construction, equipment, etc	0 00	0 00	0 00	*16,667,500 00	16,667,500 00	30,211 17

310 (30) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 30," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The entries in the "income account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of accruals, and every item should be given as accrued when that is possible; this remark applies equally to amounts returned against "dividends."

Under "other deductions," give only such items as are properly regarded as fixed charges and which are not specified in any of the captions under "deductions from income." An itemized statement should also be furnished below (page 30) of any amount returned against this caption.

Under "other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "additions for year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "deductions for year," there should appear amounts transferred from the surplus as shown in "profit and loss" on "general balance-sheet" for the year ending June 30, 1891, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "additions for year" or "deductions for year" are considerable, an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and loss" "for entry on 'general balance-sheet,' page 51" (or 49), the "profit and loss" from last year's balance-sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "additions for year;" or there should be deducted the amount returned against "deductions for year." The result will be the "profit and loss" to be carried to the "general balance-sheet," page 51 (or 49).

Explanatory Remarks

Additions for year:

Receiver's operating expenses, less receiver's earnings, included in current expenses and earnings	$5,371 12
Cash and bonds received from reorganization committee	318,735 00
	324,106 12

310 (31) *Income Account.*

(For roads making operating reports.)

Gross earnings from operation—page 35	83,228 65	
Less operating expenses—page 45	113,517 54	
Income from operation		
Deficit		30,288 89
Dividends on stocks owned—page 37	0 00	
Interest on bonds owned—page 39	0 00	
Miscellaneous income, less expenses—page 41	0 00	
Income from other sources		0 00
Total income		
Deficit		30,288 89
Deductions from income:		
Interest on funded debt accrued—page 23	31,883 34	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	16*	
Rents—page 47, A	0 00	
Taxes	3,400 00	
Permanent improvements—page 29	0 00	
Other deductions	0 00	
Total deductions from income		34,883 18
Net income		
Deficit		65,172 07
Dividends, — per cent., common stock	0 00	
Dividends, — per cent., preferred stock	0 00	
Other payments from net income	0 00	
Total		
Surplus from operations of year ending June 30, 1891		
Deficit from operations of year ending June 30, 1891		65,172 07
Surplus on June 30, 1890 (from "general balance-sheet," 1890 report)		
Deficit on June 30, 1891 (from "general balance-sheet," 1890 report)		
Additions for year		324,106 12
Deductions for year		
Surplus on June 30, 1891 (for entry on "general balance-sheet," page 51)		258,934 05
Deficit on June 30, 1891 (for entry on "general balance-sheet," page 49)		

[* In red ink in copy.]

310 (34) *Instructions for Answering Questions on Opposite Page.*

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This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "income account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "freight—other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "passenger" and "freight," indicate what should be stated for each, with the possible exception of "stock yards" and "elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "other earnings from operation," the earnings from "telegraph" and from "rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "miscellaneous income," page 41.

Explanatory Remarks.

* Proportion of amount paid transfer boats for transferring through freight between Cairo & Bird's Point, same being included in this Co.'s proportion of through rates.

† See operating expenses.

310 (35) *Earnings from Operation.*

Item.	Total receipts.	Deductions, account of repayments, etc.	Actual earnings.
Passenger:			
Passenger revenue	24,087 63		
Less repayments:			
Tickets redeemed		7 50	
Excess fares refunded		0 00	
Other repayments		36 00	
Total deductions		43 50	
Total passenger revenue			24,044 13
Mail			3,305 68
Express			1,365 97
Extra baggage and storage			722 80
Other items			0 00
Total passenger earnings			29,438 58
Freight:			
Freight revenue	57,950 90		
Less repayments:			
Overcharge to shippers		3,207 95	
Other repayments		*1,742 60	
Total deductions		4,950 55	
Total freight revenue			53,000 35
Stock yards			0 00
Elevators			0 00
Other items			0 00
Total freight earnings			53,000 35
Total passenger and freight earnings			82,438 93
Other earnings from operation:			
Car mileage—balance			254 50
Switching charges			153 14
Telegraph companies			0 00
Rent- from tracks, yards, and terminals—page 41			0 00
Rents not otherwise provided for			382 08
Other sources			789 72
Total other earnings			83,228 65
Total gross earnings from operation			

310 (42) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 42," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

A detailed analysis of "operating expenses" has been issued by the commission, and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "train mileage," page 61.

"Loss and damage" and "injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are not to be stated under "operating expenses," but are to be deducted from income as provided for on page 31 (or 33).

Explanatory Remarks.

310 (43) *Operating Expenses.*

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
Maintenance of way and structures:			
1. Repairs of roadway	3,086 43	3,551 05	6,637 48
2. Renewals of rails	7,080 96	8,054 88	15,055 84
3. Renewals of ties	2,563 98	2,949 95	5,513 93
4. Repairs of bridges and culverts	3,401 77	3,913 86	7,315 63
5. Repairs of fences, road crossings, signs, and cattle-guards	441 22	507 64	948 86
6. Repairs of buildings	200 36	447 44	647 80
7. Repairs of docks and wharves	0 00	0 00	0 00
8. Repairs of telegraph	78 49	90 30	168 79
9. Other expenses	341 86	393 31	735 17
Total	17,115 07	19,908 43	37,023 50
Maintenance of equipment:			
10. Repairs and renewals of locomotives	2,408 10	2,770 61	5,178 71
11. Repairs and renewals of passenger cars	1,977 64	0 00	1,977 64
12. Repairs and renewals of freight cars	0 00	5,729 66	5,729 66
13. Repairs and renewals of ferry-boats, tugs, floats, and barges	0 00	0 00	0 00
14. Shop machinery, tools, etc	186 37	214 43	400 80
15. Other expenses	1,177 74	1,355 05	2,532 79
Total	5,749 85	10,069 75	15,819 60
Conducting transportation:			
16. Wages of enginemen, firemen, and round-housemen	2,576 14	4,303 47	6,879 61
17. Fuel for locomotives	3,064 32	7,519 52	10,583 84
18. Water supply for locomotives	34 24	39 39	73 63
19. All other supplies for locomotives	250 98	288 78	539 76
20. Wages of other trainmen	1,637 10	4,028 25	5,665 35
21. All other train supplies	987 42	947 50	1,934 92
22. Wages of switchmen, flagmen, and watchmen	1,046 61	2,084 06	3,124 67
23. Expense of telegraph, including train-dispatchers and operators	852 41	2,565 61	3,418 02
24. Wages of station agents, clerks, and laborers	2,127 89	7,039 43	9,167 32
25. Station supplies	102 81	171 74	274 55
26. Switching charges—balance	0 00	0 00	0 00
27. Car mileage—balance	571 10	101 01	672 11
28. Loss and damage	883 83	1,469 29	2,353 12
29. Injuries to persons	170 87	306 74	477 61
30. Barges, floats, tugs, ferry-boats, expenses of, including wages, fuel, and supplies	0 00	0 00	0 00
31. Other expenses	104 40	563 68	668 08
Total	14,404 12	31,428 47	45,832 59

310 (44) *Instructions for Answering Questions on Opposite Page.*

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See "instructions," page 42.

Explanatory Remarks.

310 (45) *Operating Expenses*—Continued.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
General expenses:			
32. Salaries of officers	1,469 60	2,300 22	3,769 82
33. Salaries of clerks	785 15	903 37	1,688 52
34. General office expenses and supplies	167 56	192 78	360 34
35. Agencies, including salaries and rent	377 76	1,499 24	1,877 00
36. Advertising	307 06	17 50	324 56
37. Commissions	361 21	0 00	361 21
38. Insurance	204 81	354 29	559 10
39. Expense of fast-freight lines	0 00	0 00	0 00
40. Expense of traffic associations	0 00	0 00	0 00
41. Expense of stock yards and elevators	0 00	103 62	103 62
42. Rents for tracks, yards, and terminals—page 47 B	0 00	0 00	0 00
43. Rents not otherwise provided for	105 57	121 47	227 04
44. Legal expenses	1,177 18	1,354 38	2,531 56
45. Stationery and printing	1,310 02	1,719 76	3,029 78
46. Other general expenses	4 32	4 98	9 30
Total	6,270 24	8,571 61	14,841 85
Recapitulation of expenses:			
47. Maintenance of way and structures	17,115 07	19,908 43	37,023 50
48. Maintenance of equipment	5,749 85	10,069 75	15,819 60
49. Conducting transportation	14,404 12	31,428 47	45,832 59
50. General expenses	6,270 24	8,571 61	14,841 85
Grand total	43,539 28	69,978 26	113,517 54
Percentage of operating expenses to earnings			136.39

310. (48) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 48," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

It is the object of pages 49 and 51, by means of a "comparative general balance-sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance-sheet as it stood on June 30, 1891, should be given. In the two columns on the right, next following the printed items called for, the balance-sheet as it stood on June 30, 1892, should be given. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "increase" or a "decrease" in the account specified.

"Cash and current assets," page 49, and "current liabilities," page 51, should each be given as a total and not as a balance, corresponding to data returned in the lower table on page 23.

If there is a separate "profit and loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

* Represents interest accrued prior to date new company commenced to operate property, June 1st, 1891.

310 (49) *Comparative General Balance-sheet.*

June 30, 1891.		Assets.	June 30, 1892.		Year ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
		Cost of road—page 29				
		Cost of equipment—page 29		10,867,500 00		
		Stocks owned—page 37		0 00		
		Bonds owned—page 39		0 00		
		Other permanent investments		0 00		
		Lands owned		0 00		
		Insurance acc't, premium		793 88		
		Reorganization committee		*31,483 33		
		Receivers St. L., A. & Tex. R'y in Texas		199,375 01		
		Cash and current assets—page 23		277,193 33		
		Other assets:				
		Materials and supplies	88,229 80			
		Sinking fund	0 00			
		Sundries	0 00			
				88,229 80		
		Profit and loss—page 31 (or 33)				
		Grand total		17,264,575 35		

310 (50) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 50," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 48.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

310 (51) *Comparative General Balance-sheet.*

June 30, 1891.		Liabilities.	June 30, 1892.		Year ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
		Capital stock—page 17		2,560,000 00		
		Funded debt—page 23		14,167,500 00		
		Current liabilities—page 23		338,141 30		
		Accrued interest on funded debt not yet payable.		0 00		
		Profit and loss—page 31 (or 33)		258,934 05		
		Grand total		17,264,575 35		

310 (58) *Instructions for Answering Questions on Opposite Paige.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column-heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 58," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

In this table, state the specific "number" of each class of employees as determined from the pay-rolls on June 30, 1892; the "total number of days worked," and the "total yearly compensation," should be given for each class of employees named. There should also be given the "average daily compensation" for employees in each class computed according to the following rule: First, ascertain the entire number of days worked by the employees of any class named during the year covered by this report, to be entered under "total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "total yearly compensation;" third, divide the "total yearly compensation" by the "total number of days worked," and the quotient will be the "average daily compensation" for working days of the employees in the class named.

Under "distribution of above," data should be given only against the four subheadings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these subheadings, the same should be explained briefly, especially when figures are returned on pages 43 and 45 under the four corresponding subheadings of "operating expenses." The four items against each "total" in the lower part of the table should agree exactly with similar entries opposite corresponding "total" above; the same remark applies to data returned against "less 'general officers.'"

Explanatory Remarks.

Class.	Number.	Total number of days worked.	Total yearly compensation.	Average daily compensation.
General officers	10	3,130	29,090 40	9 29
General office clerks	10	3,130	9,841 92	3 14
Station agents	74	27,010	47,264 40	1 75
Other stationmen	88	31,862	51,737 52	1 62
Enginemen	44	15,888	57,014 04	3 59
Firemen	44	15,912	33,200 64	2 09
Conductors	30	10,802	32,068 80	2 97
Other trainmen	56	20,440	38,504 40	1 88
Machinists	51	15,963	34,084 04	2 13
Carpenters	108	33,804	77,013 00	2 28
Other shopmen	168	52,584	102,597 00	1 95
Section foremen	84	30,660	52,758 24	1 72
Other trackmen	448	140,224	168,496 20	1 21
Switchmen, flagmen, and watchmen	42	15,330	34,713 36	2 26
Telegraph operators and dispatchers	47	17,155	32,630 28	1 90
Employees—account floating equipment				
All other employees and laborers	100	33,987	76,611 72	2 26
Total (including "general officers")	1,404	467,881	877,605 96	1 87
Less "general officers"	10	3,130	29,090 40	9 29
Total (excluding "general officers")	1,394	464,751	848,515 56	1 83
Distribution of above:				
General administration	20	6,260	38,932 32	6 22
Maintenance of way and structures	640	204,088	298,207 44	1 46
Maintenance of equipment	219	68,347	136,561 04	1 99
Conducting transportation	525	188,386	403,745 16	2 14
Total (including "general officers")	1,404	467,881	877,605 96	1 87
Less "general officers"	10	3,130	29,090 40	9 29
Total (excluding "general officers")	1,394	464,751	848,515 56	1 83

310 (60) *Instructions for Answering Questions on Opposite Page.*

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The division of "operating expenses" between passenger and freight traffic, as per pages 43 and 45, together with the ton and passenger mileage, give the bases for arriving at the "estimated cost of carrying each passenger one mile," and "estimated cost of carrying one ton one mile." In computing these items, as well as the "average amount received from each passenger," "average receipts per passenger per mile," "passenger earnings per train mile," and the corresponding items called for under "freight traffic," the amounts should be carefully figured to five places beyond the decimal point, entries of results being made under the proper heading of "dollars," "cents," and "mills."

Make sure that against "total passenger revenue," "total passenger earnings," and similar items under "freight traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "passenger earnings per mile of road," "passenger earnings per train mile," and the corresponding items under "freight traffic," that "total passenger earnings" and "total freight earnings," respectively, are used. In figuring "passenger earnings per mile of road," "freight earnings per mile of road," and the four "per mile of road" items under "passenger and freight," the "total mileage operated" (single track) should in each case be used as returned on page 67 under table "A." In computing "passenger earnings per train mile," add 25 per cent. of "miles run by mixed trains" to the number of "miles run by passenger trains," to obtain the proper divisor; for "freight earnings per train mile," add 75 per cent. of "miles run by mixed trains" to the number of "miles run by freight trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

Explanatory Remarks.

Each engine in local-freight service is allowed 36 miles per day for switching in addition to the actual mileage between terminals.

Item.	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates. Dollars.	Cts.	Mills.
Passenger traffic:				
Number of passengers carried earning revenue	22,254			
Number of passengers carried one mile	912,160			
Average distance carried	39			
Total passenger revenue—page 35		24,044	13	
Average amount received from each passenger		1	03	198
Average receipts per passenger per mile		0	02	636
Estimated cost of carrying each passenger one mile		0	04	773
Total passenger earnings—page 35		29,448	58	
Passenger earnings per mile of road		53	35	976
Passenger earnings per train mile		0	7.	097
Freight traffic:				
Number of tons carried of freight earning revenue	31,086			
Number of tons carried one mile	3,297,841			
Average distance haul of one ton	106			
Total freight revenue—page 35		53,000	35	
Average amount received for each ton of freight		1	70	496
Average receipts per ton per mile			01	607
Estimated cost of carrying one ton one mile			02	122
Total freight earnings—page 35		53,000	35	
Freight earnings per mile of road		96	06	735
Freight earnings per train mile		1	11	488
Passenger and freight:				
Passenger and freight revenue—page 35		77,044	48	
Passenger and freight revenue per mile of road		139	64	923
Passenger and freight earnings—page 35		82,448	93	
Passenger and freight earnings per mile of road		149	42	710
Gross earnings from operation—page 35		83,228	65	
Gross earnings from operation per mile of road		150	85	853
Expenses—page 45		113,517	54	
Expenses per mile of road		205	75	954
Train mileage:				
Miles run by passenger trains	38,108			
Miles run by freight trains	37,645			
Miles run by mixed trains	13,192			
Total mileage trains earning revenue	88,945			
Miles run by switching trains	11,988			
Miles run by construction and other trains	5,876			
Grand total train mileage	106,809			
Mileage of loaded freight cars—north or east	134,877			
Mileage of loaded freight cars—south or west	313,421			
Mileage of empty freight cars—north or east	232,503			
Mileage of empty freight cars—south or west	44,927			
Average number of freight cars in train	14.28			
Average number of loaded cars in train	8.82			
Average number of empty cars in train	5.46			
Average number of tons of freight in train	60.24			
Average number of tons of freight in each loaded car	6.83			

310 (62) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the total tonnage carried by each road of the various commodities mentioned, company's material excluded. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the form. The object of the second column ("freight originating on this road") is to enable the commission to obtain the total movement throughout the country of the commodities named. Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly, whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffic being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

Explanatory Remarks.

310 (63) *Freight Traffic Movement.*

(Company's material excluded.)

Commodity.		Freight originating on this road.	Freight received from connecting roads and other carriers.	Total freight tonnage.	
		Whole tons.	Whole tons.	Whole tons.	Per cent.
Products of agriculture.	Grain	1,437	658	2,095	06.73
	Flour	1	979	980	03.15
	Other mill products	445	30	475	01.53
	Hay	123	53	176	00.56
	Tobacco	9	45	54	00.17
	Cotton	252	16	268	00.86
	Fruit and vegetables		15	15	00.05
	Cotton-seed products	16		16	00.05
Products of animals.	Live stock	1,123	53	1,176	03.77
	Dressed meats				
	Other packing-house products	161	448	609	01.95
	Poultry, game, and fish				
	Wool	36	22	58	00.17
	Hides and leather	20	17	37	00.11
Products of mines.	Anthracite coal				
	Bituminous coal		688	688	02.21
	Coke		37	37	00.11
	Ores		22	22	00.07
	Stone, sand, and other like articles	695	17	712	02.30
	Salt		199	199	00.64
Products of forest.	Lumber	13,128	2,594	15,722	50.57
Manufactures.	Petroleum and other oils	224	354	578	01.86
	Sugar	9	269	278	00.89
	Naval stores				
	Iron—pig and bloom	656	213	869	02.79
	Iron and steel rails		73	73	00.24
	Other castings and machinery		13	13	00.04
	Bar and sheet metal		61	61	00.20
	Cement, brick, and lime	33	169	202	00.65
	Agricultural implements	40	30	70	00.24
	Wagons, carriages, tools, etc		157	157	00.55
	Wines, liquors, and beers	4	701	705	02.27
	Household goods and furniture	20	138	158	00.55
Merchandise		1,307	615	1,922	06.17
Miscellaneous—Other commodities not mentioned above		169	2,492	2,661	08.55
Total tonnage		19,508	11,178	31,086	100.00

310 (64) *Instructions for Answering Questions on Opposite Page.*

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This page calls for a statement of the equipment owned or leased by the company making the report. Under "cars leased," all cars should be shown which are considered as owned by equipment companies, car trusts, etc., in use by the reporting company; any locomotives that are similarly "leased" should be returned against the latter item as provided for under "locomotives." It is expected that sums paid towards the purchase of equipment (that is, locomotives or cars) upon such contracts will appear in the "general balance-sheet," page 49, as a separate item, under "other assets."

In giving the "kind" of "train brake" and "automatic coupler," be very careful to write clearly and spell correctly the name or names of each style of train brake or automatic coupler in use.

Explanatory Remarks.

310 (65) *Description of Equipment.*

Item.	Number added during year.	Total number at end of year.	Equipment fitted with train brake. Number.	Kind.	Equipment fitted with automatic coupler. Number.	Kind.
Locomotives:						
Passenger	None	5	5	Westinghouse air.	None	
Freight		16	5	Hand		
			10	Stevens jamb		
Switching		7	1	Westinghouse air.		
			6	Hand		
Leased (see "instructions," page 64)		37	25	American steam		
			12	Westinghouse air.		
Total locomotives		65	65			
Cars in passenger service:						
First-class passenger cars	5	5	5	Westinghouse automatic.	5	Miller hooks.
Second-class passenger cars		5½	5½	"	5½	" "
Combination passenger cars		1	1	"	1	" "
Emigrant cars		2½	2½	"	2½	" "
Dining cars		0				
Parlor cars		0				
Sleeping cars		0				
Baggage, express, and postal cars	2	9	9	"	9	" "
Other cars in passenger service						
Total	5	23	23		23	
Cars in freight service:						
Box cars		296				
Flat cars		107½				
Stock cars						
Coal cars	40	103½				
Tank cars						
Refrigerator cars		12½				
Other cars						
Total	40	519½	None		None	
Cars in company's service:						
Gravel cars		30				
Derrick cars		1				
Caboose cars		19½				
Other road cars		5				
Total		55½	None		None	
Cars contributed to fast-freight line service		6				
Total cars owned		618	23		23	
Cars leased (see "instructions," page 64):						
Passenger		18				
Freight		1,312				
Grand total cars		1,948				

310 (68) *Instructions for Answering Questions on Opposite Page.*

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Under "consumption of fuel by locomotives," the ton of two thousand pounds should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "average cost at distributing point," different points may be named if desired, giving the cost at each.

Explanatory Remarks.

New rails laid during year.

Kind.	Tons.	Weight per yard.	Average price per ton at distributing point.
Iron	0.00		
Total iron			
Steel	3.93	56 lbs.	34.50
Total steel	3.93		

New ties laid during year.

Kind.	Number.	Average price at distributing point.
Cross—oak	21,773	.24
Total	21,773	

Consumption of Fuel by Locomotives.

Locomotives.	Coal—tons.		Wood—cords.		Total fuel consumed—tons.	Miles run.	Average pounds consumed per mile.
	Anthracite.	Bituminous.	Hard.	Soft.			
Passenger		1,033	16		1,044	42,028	49.68
Freight		1,874	27		1,892	48,504	77.86
Switching		323	7		328	29,834	22.06
Construction		108	2		109	5,964	36.55
Total		3,338	52		3,373	126,420	53.36
Average cost at distributing point:							
Texarkana		3.25					
Commerce		3.00					
At all points			1.85				

311 "EXHIBIT I." Copy.

ANNUAL REPORT OF THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS TO THE RAILROAD COMMISSIONERS OF THE STATE OF TEXAS FOR THE YEAR ENDING JUNE 30, 1892. FILED MARCH 23, 1893. B. G. DUVAL, CLERK, BY D. H. HART, DEPUTY.

311 (22) Copy.

Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 22," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Recapitulation of Funded Debt.—Under this head should be given the totals of the classes of debt returned on page 19, except that under "miscellaneous obligations," should be included "equipment trust obligations," as returned on page 21. The total of accrued interest here given is the amount to be carried to page 31 (or 33), as "interest on funded debt accrued."

Receiver's Certificates.—It is expected, under this heading, that receivers will report not only the certificates which may have been issued since the road for which they report came into their hands, but certificates issued by former receivers as well, if any such remain outstanding.

Current Assets and Liabilities.—Under "assets" it is desired that all assets should be returned which, in the ordinary operation of the property, may be applied to the payment of current liabilities, according to following instructions:

Cash.—State under this heading the total amount of cash in the hands of the treasurer, banks, and other depositories available for use upon demand.

Bills Receivable.—The amount under this heading should represent the value of all *bona fide* and collectible obligations held by the company in the form of bills receivable, or other evidence of moneys loaned, due on demand or at a future date.

Due from Agents.—State the amount due from agents of the company, including conductors and station agents, which is to be remitted as applying to business up to and including June 30.

Net Traffic Balances.—State the amount due from other companies (after deducting the amount due to other companies) on operations up to and including June 30.

Due from Solvent Companies and Individuals.—Under this heading should be stated the amount due from the various sources indicated, payment of which is reasonably assured.

Other Cash Assets.—State the value of other proper cash assets, if any, naming same. Do not include "materials and supplies." "Stocks" or "bonds owned" should not be returned under "current assets," but as provided for on page 37 or 39. For "liabilities," the following instructions should be observed:

Receiver's Certificates.—Enter the total from the table on opposite page (23).

Loans and Bills Payable.—State the amount of all loans or bills payable due on or prior to June 30, and which remain unpaid on that date; and also all outstanding loans and bills payable not yet due, or payable on demand.

Audited Vouchers and Accounts.—State the amount of audited vouchers and of accounts applying to the business up to and including June 30, which have been approved for payment at the date of filing the report, or for which a recognized liability against the company exists.

Wages and Salaries.—State the amount of wages and salaries due for services rendered up to and including June 30, and remaining unpaid on that date.

Net Traffic Balances.—State the amount due to other companies (after deducting the amount due from other companies) on operations up to and including June 30.

Dividends not Called for.—State the amount of all dividends remaining unpaid on June 30, which have been declared up to and including that date.

Matured Interest Coupons Unpaid.—State the amount of all interest due and unpaid up to and including June 30; in this amount include also interest falling due as of date July 1.

Rents Due July 1.—State all sums due for rent of leased roads and other properties up to and including July 1.

Miscellaneous.—State any other unfunded indebtedness not previously specified.

Explanatory Remarks.

* See notation on page 18.
† " " " " 20.

311 (23) Copy.

Recapitulation of Funded Debt.

Class of debt.	Amount issued.	Amount outstanding.	Interest.	
			Amount accrued during year.	Amount paid during year.
Mortgage bonds—page 10	9,445,600 00	9,445,600 00	377,800 00	*
Miscellaneous obligations—page 21	288,748 59	260,844 26	0 00	
Income bonds—page 19	4,722,500 00	4,722,500	0 00	0 00
Total	14,456,248 59	14,428,344 26	377,800 00	

Receiver's Certificates.

Date issued.	Amount issued.	Amount outstanding.	Principal.		Interest.		Rate.
			Amount paid during year.	Amount funded or otherwise disposed of.	Amount accrued during year.	Amount paid during year.	
			None				
Total							

Current Assets and Liabilities.

Cash and current assets available for payment of current liabilities.		Current liabilities accrued to and including June 30, 1891.	
Cash	43,564 05	Receiver's certificates	0 00
Bills receivable	546 30	Loans and bills payable	261 30
Due from agents	17,928 95	Audited vouchers and accounts	479,505 01
Net traffic balances due from other companies	0 00	Wages and salaries	105,844 48
Due from solvent companies and individuals	53,197 50	Net traffic balances due to other companies	0 00
Other cash assets (excluding "materials and supplies")*	0 00	Dividends not called for	0 00
		Matured interest coupons unpaid (including coupons due July 1)	0 00
		Rents due July 1	0 00
		Miscellaneous	0 00
Balance—current liabilities	470,373 99	Balance—cash assets	
Total	585,610 79	Total	585,610 79

*Materials and supplies on hand, $63,845.97.

(See general balance-sheet—page 9.)

311 (28) *Instructions for Answering Questions on Opposite Page.*

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The purpose of the opposite page is to show to what extent permanent improvements have been made upon property and equipment during the year. No charge should be made to this account for renewals or repairs, but only such expenditures as result in a permanent addition or betterment to property.

The amounts charged should be net amounts, that is to say, there should be a deduction from gross expenditures equal to the receipts from sale of property whose use is suspended, or the value of such property. In case credits for any item exceed disbursements, the balance should be entered in red ink, and an allowance made for the same in the footings.

All permanent improvements should be charged to one of the three accounts as provided on opposite page, viz: "Operating expenses," in which case the total should be distributed in said account on pages 43 and 45; "income account," in which case the total should be carried to appropriate item on page 31 (or 33); this column, however, is intended for the use of those roads only with which it is now (or will hereafter be) a custom to charge permanent improvements, wholly or in part, to "income account;" and construction or equipment account. Under the caption "total cost to June 30, 1892," there should be entered the amounts returned as "total cost to June 30, 1891," plus the amounts "charged to construction or equipment." It is these totals that should be returned on the "general balance-sheet," page 49, against the items "cost of road" and "cost of equipment."

Explanatory Remarks.

* When the property was purchased by this company no division or apportionment was made as between cost of road, cost of equipment, or the value of franchises.

For that reason we find it impossible to apportion the amounts to the various accounts under head of "construction." The amounts shown for the various classes of "equipment" are based on the estimated cost of the equipment.

311 (29) *Cost of Road, Equipment, and Permanent Improvements.*

Item.	Expenditures during year.			Total cost to June 30, 1891.	Total cost to June 30, 1892.	Cost per mile.
	Included in operating expenses.	Not included in operating expenses.				
		Charged to income account as permanent improvements.	Charged to construction or equipment.			
Construction:						
Right of way*			1,111 25			
Other real estate*			0 00			
Fences*			0 00			
Grading and bridge and culvert masonry*			0 00			
Bridges and trestles*			0 00			
Rails*			0 00			
Ties*			0 00			
Other superstructure*			0 00			
Buildings, furniture and fixtures*			0 00			
Shop machinery and tools*			0 00			
Engineering expenses*			0 00			
Interest during construction*			0 00			
Discount on securities sold for construction*			0 00			
Telegraph line*			0 00			
Wharfing, etc.*			0 00			
Sidings and yard extensions*			0 00			
Terminal facilities and elevators*			0 00			
Road built by contract*			0 00			
Purchase of constructed road*			0 00			
Other items*			0 00			
Total construction	0 00	0 00	1,111 25	$15,480,014 75	$15,481,126 00	28,660 77
Equipment:						
Locomotives			68,132 86	408,163 94	476,296 80	
Passenger cars			5,624 81	117,519 19	123,144 00	
Sleeping, parlor and dining cars			0 00	0 00	0 00	
Baggage, express and postal cars			1,370 75	33,325 51	34,696 26	
Combination cars			0 00	13,575 00	13,575 00	
Freight cars			219,323 88	606,700 71	826,024 59	
Other cars of all classes			0 00	8,280 90	8,280 90	
Floating equipment			0 00	0 00	0 00	
Total equipment	0 00	0 00	294,401 30	1,187,485 25	1,481,946 55	2,686 14
Grand total cost construction, equipment, etc.						
Total cost construction, equipment, etc., State of Texas	0 00	0 00	295,512 55	16,667,500 00	16,963,072 55	30,746 91

Instructions for Answering Questions on Opposite Page.

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The entries in the "income account" should be taken from the pages indicated after the items called for. Where no pages are referred to, the entries must be taken from the books of the company. It should be remembered that this page is made up on the basis of accruals, and every item should be given as accrued when that is possible; this remark applies equally to amounts returned against "dividends."

Under "other deductions," give only such items as are properly regarded as fixed charges and which are not specified in any of the captions under "deductions from income." An itemized statement should also be furnished below (page 30) of any amount returned against this caption.

Under "other payments from net income," give only such items as are properly regarded as earnings to the stockholders of the road, other than earnings which are reported as "dividends." In every case, a full explanation should be given below (page 30) of the item entered against this heading.

Under "additions for year," there should be given amounts transferred from other accounts to the surplus; or amounts representing an increase in resources not properly assignable to the earnings of property operated during the year covered by this report, or to income accruing on investments during the year covered by this report.

Under "deductions for year," there should appear amounts transferred from the surplus as shown in "profit and loss" on "general balance-sheet" for the year ending June 30, 1891, to other accounts; or amounts written off resulting from adjustments; or payments not properly chargeable to the operations of property during the year covered by this report.

If amounts returned as "additions for year" or "deductions for year" are considerable, an itemized statement should be given in the blank space below on this page (30).

In order to discover the "profit and loss" "for entry on 'general balance-sheet,' page 51" (or 49), the "profit and loss" from last year's balance-sheet should be combined with the surplus or deficit arising from the operations covered by this year's report. To this total should be added the amount returned against "additions for year;" or there should be deducted the amount returned against "deductions for year." The result will be the "profit and loss" to be carried to the "general balance-sheet," page 51 (or 49).

Explanatory Remarks.

Additions for year:	
Receiver's operating expenses, less receiver's earnings included in current expenses & earnings during year ending June 30, '92	36,708 64
Adjustment of material accounts—supplies and material on hand (as per inventories taken Dec. 31, '91) over & above am'ts as shown by general ledger	3,524 52
Surplus funds received from reorganization committee	7,350 73
	47,583 89
Deductions for year:	
Loss on stock, tools, & machinery destroyed by fire in car & paint sheds at Tyler, Texas, September 18, 1891, over and above amount of insurance on same	971 99
Sundry reorganization expenses	1,455 26
	2,427 25

311 (31) Copy.

Income Account.

(For roads making operating reports.)

Gross earnings from operation—page 35	1,449,442 29	
Less operating expenses—page 45	1,472,527 00	
Income from operation		
Deficit	1,639,449 79*	23,084 71
Dividends on stocks owned—page 37	0 00	
Interest on bonds owned—page 39	8,657 00	
Miscellaneous income, less expenses—page 41	0 00	
Income from other sources		8,657 00
Total income		
Deficit		14,427 71
Deductions from income:		
Interest on funded debt accrued—page 23	377,803 00	
Interest on interest-bearing current liabilities accrued, not otherwise provided for	821 46	
Rents—page 47, A	0 00	
Taxes	44,561 55	
Permanent improvements—page 29	0 00	
Other deductions	0 00	
Total deductions from income		423,183 01
Net income		
Deficit		437,610 72
Dividends, — per cent., common stock	0 00	
Dividends, — per cent., preferred stock	0 00	
Other payments from net income	0 00	
Total		0 00
Surplus from operations of year ending June 30, 1892		
Deficit from operations of year ending June 30, 1892		437,610 72
Surplus on June 30, 1891 (from "general balance-sheet," 1891 report)		258,934 05
Deficit on June 30, 1891 (from "general balance-sheet," 1891 report)		
Additions for year		47,383 89
Deductions for year		2,427 05
Surplus on June 30, 1892 (for entry on "general balance-sheet," page 51)		
Deficit on June 30, 1892 (for entry on "general balance-sheet," page 49)		133,719 83

[* In pencil in copy.]

311 (34) Copy.

Instructions for Answering Questions on Opposite Page.

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This statement should show the actual amount of earnings from the operation of the road during the year for the respective items mentioned. The fact that any part of such earnings has not, at the time of making the report, passed into the treasurer's hands should not preclude the same from being stated here.

It will be observed that this page is arranged to show what deductions are made from the gross receipts before stating the actual earnings from operations which pass to the "income account," page 31. The items of deductions called for are intended to be such moneys as in fact belong to shippers or passengers, and not to the reporting carrier, but which are temporarily in the carrier's hands.

"Commissions" are considered an expense and should not be deducted here. Under "freight—other repayments," cases of refund, for the purpose of equalizing rates upon export traffic with the rates at other cities, should be shown; large amounts of "deductions, account of repayments, etc.," should be explained. The amounts from which deductions are to be made should be entered in the "total receipts" column, and the net amounts, after deductions are subtracted, are to be shown in the last column; items from which no deductions are made are also to be stated in the last column.

The items from which earnings are derived, under the respective headings of "passenger" and "freight," indicate what should be stated for each, with the possible exception of "stock yards" and "elevators." For these items the earnings on this page are only to be shown when directly connected with the operation of the road; also under "other earnings from operation," the earnings from "telegraph" and from "rents not otherwise provided for," are only to be stated when directly connected with the operation of the road. If revenue is received from any of the items mentioned, through a tenant or otherwise, not directly connected with the operation of the road, such revenue should be entered under "miscellaneous income," page 41.

Explanatory Remarks.

* See operating expenses, page 43.

311 (35) Copy.

Earnings from Operation—State of Texas.

Item.	Total receipts.	Deductions, account of repayments, etc.	Actual earnings.
Passenger:			
Passenger revenue	324,295 26		
Less repayments:			
Tickets redeemed		190 86	
Excess fares refunded		76 37	
Other repayments		11 35	
Total deductions		278 58	
Total passenger revenue			324,016 68
Mail			40,109 04
Express			23,751 10
Extra baggage and storage			3,622 65
Other items			0 00
Total passenger earnings			401,499 47
Freight:			
Freight revenue	1,083,897 93		
Less repayments:			
Overcharge to shippers		49,391 40	
Other repayments		4,019 90	
Total deductions		53,411 30	
Total freight revenue			1,030,486 63
Stock yards			0 00
Elevators			0 00
Other items			0 00
Total freight earnings			1,030,486 63
Total passenger and freight earnings			1,431,986 10
Other earnings from operation:			
Car mileage—balance			
Switching charges			9,056 84
Telegraph companies			2,227 71
Rents from tracks, yards, and terminals—page 41			0 00
Rents not otherwise provided for			0 00
Other sources			6,171 65
Total other earnings			17,456 19
Total gross earnings from operation—Texas			
Total gross earnings from operation—entire line			1,449,442 29

311 (42) *Instructions for Answering Questions on Opposite Page.*

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A detailed analysis of "operating expenses" has been issued by the commission, and sent to each road making an operating report. The instructions it contains should be followed in making returns on pages 43 and 45.

For the apportionment of operating expenses between passenger and freight traffic, the following instructions prescribed by the Interstate Commerce Commission should be followed: All expenses which are naturally chargeable to either passenger or freight traffic should be entered in their respective columns; expenses which are not naturally chargeable to either traffic should be apportioned on a mileage basis, making the division as between passenger and freight traffic in the proportion which the passenger and freight train mileage bears to the total mileage of trains earning revenue. This computation should be made from the data furnished under "train mileage," page 61.

"Loss and damage" and "injuries to persons" should be apportioned to the train which occasioned the outlay, passenger or freight, as the fact was.

Mixed trains will continue to be treated for the present as one-fourth passenger and three-fourths freight.

Taxes are not to be stated under "operating expenses," but are to be deducted from income as provided for on page 31 (or 33).

Explanatory Remarks.

311 (43) Copy.

Operating Expenses.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
Maintenance of way and structures:			
1. Repairs of roadway	111,805 07	141,148 84	252,954 90
2. Renewals of rails	2,928 24	3,696 73	6,624 97
3. Renewals of ties	31,203 04	39,505 69	70,708 73
4. Repairs of bridges and culverts	40,969 15	51,721 24	92,690 39
5. Repairs of fences, road crossings, signs, and cattle-guards	6,263 69	7,907 55	14,171 24
6. Repairs of buildings	7,730 16	3,704 01	11,434 17
7. Repairs of docks and wharves	0 00	0 00	0 00
8. Repairs of telegraph	2,082 07	2,628 50	4,710 57
9. Other expenses	2,240 24	2,828 18	5,068 42
Total	205,312 66	253,140 73	458,453 39
Maintenance of equipment:			
10. Repairs and renewals of locomotives	34,536 66	43,600 58	78,137 24
11. Repairs and renewals of passenger cars	13,028 91	0 00	13,028 91
12. Repairs and renewals of freight cars	0 00	61,886 22	61,886 22
13. Repairs and renewals of ferry-boats, tugs, floats, and barges	0 00	0 00	0 00
14. Shop machinery, tools, etc	7,055 27	8,006 88	15,062 15
15. Other expenses	5,714 33	7,214 05	12,928 38
Total	60,335 17	121,607 73	187,042 90
Conducting transportation:			
16. Wages of enginemen, firemen, and round-housemen	37,087 65	67,274 25	104,361 90
17. Fuel for locomotives	40,113 88	104,393 74	144,507 62
18. Water supply for locomotives	7,003 28	8,839 08	15,842 26
19. All other supplies for locomotives	3,271 43	4,104 75	7,376 18
20. Wages of other trainmen	13,258 63	17,023 04	30,281 67
21. All other train supplies	12,813 09	11,401 03	24,214 12
22. Wages of switchmen, flagmen, and watchmen	7,751 53	18,892 49	26,644 02
23. Expense of telegraph, including train-dispatchers and operators	9,629 72	28,965 03	38,594 75
24. Wages of station agents, clerks, and laborers	31,699 90	96,794 28	127,795 18
25. Station supplies	1,674 14	2,857 84	4,531 98
26. Switching charges—balance	0 00	0 00	0 00
27. Car mileage—balance	7,552 23	*6,068 13	1,484 10
28. Loss and damage	12,021 58	24,722 99	36,744 97
29. Injuries to persons	3,527 80	3,697 99	7,225 79
30. Barges, floats, tugs, ferry-boats, expenses of, including wages, fuel, and supplies	0 00	0 00	0 00
31. Other expenses	3,846 39	4,580 27	8,426 66
Total	164,527 55	429,480 36	624,007 91

* In red ink in copy.

311 (44) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 44," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 42.

Explanatory Remarks.

311 (45) Copy.

Operating Expenses—Continued.

(Apportionment between passenger and freight traffic is estimated according to the rule prescribed by the Interstate Commerce Commission.)

Item.	Chargeable to passenger traffic.	Chargeable to freight traffic.	Total.
General expenses:			
32. Salaries of officers	22,501 51	35,826 03	58,327 54
33. Salaries of clerks	8,608 39	10,867 60	19,475 99
34. General office expenses and supplies	14,770 05	18,646 36	33,416 41
35. Agencies, including salaries and rent	5,283 83	18,647 01	23,930 84
36. Advertising	3,955 48	510 12	4,465 60
37. Commissions	9,154 38	0 00	9,154 38
38. Insurance	1,704 58	6,390 98	8,095 56
39. Expense of fast-freight lines	0 00	0 00	0 00
40. Expense of traffic associations	0 00	0 00	0 00
41. Expense of stock yards and elevators	0 00	920 13	920 13
42. Rents for tracks, yards, and terminals—page 47 B	0 00	0 00	0 00
43. Rents not otherwise provided for	1,515 08	1,912 70	3,427 78
44. Legal expenses	12,606 03	15,914 41	28,520 44
45. Stationery and printing	4,090 12	8,188 10	12,278 22
46. Other general expenses	48 58	61 33	109 91
Total	84,248 03	117,874 77	202,122 80
Recapitulation of expenses:			
47. Maintenance of way and structures	205,312 66	253,140 73	458,453 39
48. Maintenance of equipment	66,435 17	121,507 73	187,942 90
49. Conducting transportation	190,527 55	439,480 26	624,007 81
50. General expenses	84,248 03	117,874 77	202,122 80
Grand total	550,423 41	922,103 59	1,472,527 00
Percentage of expenses to earnings—entire line			161.59
Operating expenses—State of Texas:			
Maintenance of way and structures			
Maintenance of equipment			
Conducting transportation			
General expenses			
Total	See above.		
Percentage of expenses to earnings—Texas	See above.		

311 (46) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 46," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Table "A."

State the amount of rents paid for leased roads and designate whether payment is made by payment of interest on guaranteed bonds, by payment of dividends on guaranteed stocks or by cash payment. Carry the total to the "income account," page 31 (or 33), as deduction from income, charged to "rents."

Table "B."

State the amount of rents paid for lease of other property as called for in the table. Carry the total to "operating expenses," page 45.

Payments for lease of cars or equipment should not be entered on opposite page as "rents paid for lease of other property," but should be returned as prescribed on page 21 of this form.

Explanatory Remarks.

311 (47)

Copy.

RENTALS PAID.

A.—*Rents Paid for Lease of Road.*

Name of road.	Interest on bonds guaranteed.	Dividends on stock guaranteed.	Cash.	Total.
Nothing.				
Total rents—A				

For entry on page 31 (or 33).

B.—*Rents Paid for Lease of Other Property.*

Designation of property.	Situation of property leased.	Name of company owning property leased.	Item.	Total.
Tracks:				
Total				
Yards:				Nothing
Total				
Terminals:				
Total				
	Grand total rents—B			

(For entry on page 45, item 42.)

311 (48) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 48," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

It is the object of pages 49 and 51, by means of a "comparative general balance-sheet," to show the financial changes that have taken place in the financial condition of the road during the year covered by the report. On the left of each page, in first two columns, the balance-sheet as it stood on June 30, 1891, should be given. In the two columns on the right, next following the printed items called for, the balance-sheet as it stood on June 30, 1892, should be given.. In the last two columns on the right, should be shown the difference between the items named as returned for the two dates respectively, entered in the proper column, according as that difference shows an "increase" or a "decrease" in the account specified.

"Cash and current assets," page 49, and "current liabilities," page 51, should each be given as a total and not as a balance, corresponding to data returned in the lower table on page 23.

If there is a separate "profit and loss" account for the property returned on page 11, the net result of the year's operations may be entered as a separate item.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

311 (49) Copy.

Comparative General Balance-sheet.

June 30, 1891. Item.	June 30, 1891. Total.	Assets.	June 30, 1892. Item.	June 30, 1892. Total.	Year ending June 30, 1892. Increase.	Year ending June 30, 1892. Decrease.
	15,480,014 75	Cost of road—page 29		15,481,126 00	1,111 25	
	1,187,485 25	Cost of equipment—page 29		1,481,946 55	294,461 30	
	0 00	Stocks owned—page 37		0 00		
	0 00	Bonds owned—page 39		0 00		
	0 00	Other permanent investments		0 00		
				0 00		
	0 00	Lands owned		0 00		
	0 00	Lands owned		0 00		
	793 88	Insurance ac. premium		2,756 43	1,962 55	
	31,483 33	Reorganization committee		0 00		31,483 33
	199,375 01	Rec'd S. L. A. & T. R'y in Texas, gen'l acc't		235,323 47	35,948 46	
	277,193 33	Cash and current assets—page 23		115,236 80		161,956 53
		Other assets:				
88,229 80		Materials and supplies	63,845 97			
0 00		Sinking fund	0 00			
0 00		Sundries	0 00			
	88,229 80			63,845 97		24,383 83
	0 00	Profit and loss—page 31 (or 33)		133,719 83	133,719 83	
	17,264,575 35	Grand total		17,513,955 05	467,203 39	217,823 69

311 (50) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 50," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 48.

In case items entered in columns headed "increase" or "decrease" are due to consolidation or reorganization and the issue of new stocks or new bonds, or to any important financial operation during the year covered by this report, full explanation of the same should be made on page 53 of this form.

Explanatory Remarks.

311 (51) Copy.

Comparative General Balance-sheet.

June 30, 1891.		Liabilities.	June 30, 1892.		Year ending June 30, 1892.	
Item.	Total.		Item.	Total.	Increase.	Decrease.
	2,500,000 00	.....Capital stock—page 17.....		2,500,000 00		
	14,167,500 00	.....Funded debt—page 23.....		14,428,344 26	260,844 26	
	338,141 30	....Current liabilities—page 23...		585,610 79	247,469 49	
	0 00	Accrued interest on funded debt not yet payable.				
	258,934 05	..Profit and loss—page 31 (or 33)...		0 00	.....	258,934 05
	17,264,575 35	.... .Grand total.....		17,513,955 05	508,313 75	258,934 05

311 (58) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 58," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

In this table, state the specific "number" of each class of employees as determined from the pay-rolls on June 30, 1892; the "total number of days worked," and the "total yearly compensation," should be given for each class of employees named. There should also be given the "average daily compensation" for employees in each class computed according to the following rule: First, ascertain the entire number of days worked by the employees of any class named during the year covered by this report, to be entered under "total number of days worked;" second, ascertain the total compensation paid to the employees of the class during said year, to be entered under "total yearly compensation;" third, divide the "total yearly compensation" by the "total number of days worked," and the quotient will be the "average daily compensation" for working days of the employees in the class named.

Under "distribution of above," data should be given only against the four subheadings printed, and in making the distribution called for, if nothing is to be returned opposite any one or more of these subheadings, the same should be explained briefly, especially when figures are returned on pages 43 and 45 under the four corresponding subheadings of "operating expenses." The four items against each "total" in the lower part of the table should agree exactly with similar entries opposite corresponding "total" above; the same remark applies to data returned against "less 'general officers.'"

Explanatory Remarks.

311 (59) *Employees and Salaries—State of Texas.*

Class.	Number.	Total number of days worked.	Total yearly compensation.	Average daily compensation.
General officers	11	3,168	29,439 71	9 29
General office clerks	10	2,880	8,721 60	3 03
Station agents	68	24,820	43,452 36	1 75
Other stationmen	71	26,087	46,007 04	1 76
Enginemen	44	16,176	58,280 28	3 63
Firemen	44	16,188	33,838 80	2 09
Conductors	43	15,989	41,036 40	2 57
Other trainmen	54	19,749	36,139 56	1 83
Machinists	55	17,184	38,275 80	2 23
Carpenters	114	36,115	80,912 52	2 24
Other shopmen	87	27,240	54,428 76	2 00
Section foremen	81	29,565	51,038 64	1 73
Other trackmen	487	151,824	182,739 48	1 20
Switchmen, flagmen, and watchmen	34	12,194	28,825 94	2 36
Telegraph operators and dispatchers	43	15,618	33,599 60	2 14
Employees—account floating equipment	0	0	0 00	0 00
All other employees and laborers	164	60,462	118,420 68	1 96
Total (including "general officers")—Texas	1,410	475,259	884,957 15	1 87
Less "general officers"	11	3,168	29,439 71	9 29
Total (excluding "general officers")—Texas	1,399	472,091	855,517 44	1 81
Distribution of above:				
General administration	21	6,048	38,161 31	6 31
Maintenance of way and structures	682	217,504	314,690 64	1 45
Maintenance of equipment	142	44,424	92,704 56	2 09
Conducting transportation	265	207,283	439,400 64	2 12
Total (including "general officers")—Texas	1,410	475,259	884,957 15	1 87
Less "general officers"	11	3,168	29,439 71	9 29
Total (excluding "general officers")—Texas	1,399	472,091	855,517 44	1 81
Total (including "general officers")—entire line	See above			

311 (60) Copy.

Instructions for Answering Questions on Opposite Page.

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 60," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

The division of "operating expenses" between passenger and freight traffic, as per pages 43 and 45, together with the ton and passenger mileage, give the bases for arriving at the "estimated cost of carrying each passenger one mile," and "estimated cost of carrying one ton one mile." In computing these items, as well as the "average amount received from each passenger," "average receipts per passenger per mile," "passenger earnings per train mile," and the corresponding items called for under "freight traffic," the amounts should be carefully figured to five places beyond the decimal point, entries of results being made under the proper heading of "dollars," "cents," and "mills."

Make sure that against "total passenger revenue," "total passenger earnings," and similar items under "freight traffic," are entered the respective amounts returned on page 35 opposite said items; also, in the computation of "passenger earnings per mile of road," "passenger earnings per train mile," and the corresponding items under "freight traffic," that "total passenger earnings" and "total freight earnings," respectively, are used. In figuring "passenger earnings per mile of road," "freight earnings per mile of road," and the four "per mile of road" items under "passenger and freight," the "total mileage operated" (single track) should in each case be used as returned on page 69 under table "A." In computing "passenger earnings per train mile," add 25 per cent. of "miles run by mixed trains" to the number of "miles run by passenger trains," to obtain the proper divisor; for "freight earnings per train mile," add 75 per cent. of "miles run by mixed trains" to the number of "miles run by freight trains."

"Miles run by switching trains" may be given according to the method heretofore in use, or such other method as shall be considered most accurate. State upon this page (60) the process pursued in ascertaining mileage of switching trains.

Explanatory Remarks.

Each engine in local-freight service is allowed 36 miles per day for switching in addition to the actual mileage between terminals.

311 (61) Copy.

Passenger and Freight and Train Mileage—State of Texas.

Item.	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates. Dollars.	¢	Mills.
Passenger traffic:				
Number of passengers carried earning revenue	315,022			
Number of passengers carried one mile	13,965,885			
Average distance carried	44			
Total passenger revenue—page 35		334,016	68	
Average amount received from each passenger		1	06	030
Average receipts per passenger per mile		0	02	556
Estimated cost of carrying each passenger one mile		0	04	213
Total passenger earnings—page 35		401,409	47	
Passenger earnings per mile of road		727	74	963
Passenger earnings per train mile		0	83	109
Freight traffic:				
Number of tons carried of freight earning revenue	441,214			
Number of tons carried one mile	59,472,888			
Average distance haul of one ton	138			
Total freight revenue—page 35		1,030,486	63	
Average amount received for each ton of freight		2	38	971
Average receipts per ton per mile		0	01	733
Estimated cost of carrying one ton one mile		0	01	550
Total freight earnings—page 35		1,030,486	63	
Freight earnings per mile of road		1,867	83	873
Freight earnings per train mile		1	08	825
Passenger and freight:				
Passenger and freight revenue—page 35		1,364,503	31	
Passenger and freight revenue per mile of road		2,473	27	045
Passenger and freight earnings—page 35		1,431,896	10	
Passenger and freight earnings per mile of road		2,595	58	836
Gross earnings from operation—page 35		1,448,442	29	
Gross earnings from operation per mile of road		2,627	22	909
Expenses—page 45		1,472,527	00	
Expenses per mile of road		2,669	07	196
Train mileage:				
Miles run by passenger trains	453,267			
Miles run by freight trains	520,901			
Miles run by mixed trains	119,316			
Total mileage trains earning revenue	1,093,484			
Miles run by switching trains	132,418			
Miles run by construction and other trains	84,105			
Grand total train mileage	1,310,007			
Mileage of loaded freight cars—north or east	2,749,266			
Mileage of loaded freight cars—south or west	4,392,807			
Mileage of empty freight cars—north or east	2,418,302			
Mileage of empty freight cars—south or west	702,329			
Average number of freight cars in train	15.83			
Average number of loaded cars in train	11.02			
Average number of empty cars in train	4.81			
Average number of tons of freight in train	62.42			
Average number of tons of freight in each loaded car	5.67			

311 (62) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 62," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

See "instructions," page 60, observing that references to "page 35" in the second paragraph do not apply to filling out page 63, unless data returned on page 35 of the Annual Report to the Interstate Commerce Commission is used.

Explanatory Remarks.

311 (63) *Passenger and Freight and Train Mileage—Entire Line.*

Item.	Column for tonnage, number passengers, number trains, mileage, number cars.	Columns for revenue and rates.		
		Dollars.	Cts.	Mills.
Passenger traffic:				
Number of passengers carried earning revenue				
Number of passengers carried one mile				
Average distance carried				
Total passenger revenue				
Average amount received from each passenger				
Average receipts per passenger per mile				
Estimated cost of carrying each passenger one mile				
Total passenger earnings				
Passenger earnings per mile of road				
Passenger earnings per train mile				
Freight traffic:				
Number of tons carried of freight earning revenue				
Number of tons carried one mile				
Average distance haul of one ton				
Total freight revenue				
Average amount received for each ton of freight				
Average receipts per ton per mile				
Estimated cost of carrying one ton one mile				
Total freight earnings				
Freight earnings per mile of road				
Freight earnings per train mile				
Passenger and freight:				
Passenger and freight revenue				
Passenger and freight revenue per mile of road				
Passenger and freight earnings				
Passenger and freight earnings per mile of road				
Gross earnings from operation				
Gross earnings from operation per mile of road				
Expenses				
Expenses per mile of road				
Train mileage:				
Miles run by passenger trains				
Miles run by freight trains				
Miles run by mixed trains				
Total mileage trains earning revenue				
Miles run by switching trains				
Miles run by construction and other trains				
Grand total train mileage				
Mileage of loaded freight cars—north or east				
Mileage of loaded freight cars—south or west				
Mileage of empty freight cars—north or east				
Mileage of empty freight cars—south or west				
Average number of freight cars in train				
Average number of loaded cars in train				
Average number of empty cars in train				
Average number of tons of freight in train				
Average number of tons of freight in each loaded car				

311 (64) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 64," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

This page calls for a statement of the total tonnage carried by each road of the various commodities mentioned, company's material excluded. It will be observed that the table calls for the names of any important commodities which are carried by the roads and which are not specifically provided for in the form. The object of the second column ("freight originating on this road") is to enable the commission to obtain the total movement throughout the country of the commodities named. Each carrier should report in this column the tonnage of all traffic which originates at any and every point on its line. All traffic which is received from rail or water connections directly, whether through elevators or other methods of transfer, and the initial movement of which has been on the line of other carriers, should be given in the next column. Each carrier supplying the data called for by this table should adopt such methods as will prevent the same traffic being reported as originating on more than one line. The second column is intended to show only the initial movement of the traffic.

The percentage should be computed to show what proportion the total tonnage of each commodity bears to the total tonnage of all commodities carried.

Explanatory Remarks.

311 (65) Copy.

Freight Traffic Movement—State of Texas.

(Company's material excluded.)

Commodity		Freight originating on this road.	Freight received from connecting roads and other carriers.	Total freight tonnage.	
		Whole tons.	Whole tons.	Whole tons.	Per cent.
Products of agriculture.	Grain	9,797	9,261	19,058	04.42
	Flour	3,168	13,252	16,420	03.81
	Other mill products	153	2,366	2,519	00.58
	Hay	586	2,419	3,005	00.69
	Tobacco	3	290	293	00.07
	Cotton	63,336	5,347	68,683	15.93
	Fruit and vegetables	51	5,249	5,300	01.23
	Cotton-seed products	21,917	878	22,795	05.29
Products of animals.	Live stock	7,267	1,864	9,131	02.12
	Dressed meats	14	125	139	00.04
	Other packing-house products	252	5,884	6,136	01.42
	Poultry, game, and fish	0	0	0	0.00
	Wool	240	270	510	00.12
	Hides and leather	180	198	378	00.09
Products of mines.	Anthracite coal		288	288	00.07
	Bituminous coal		15,276	15,276	03.54
	Coke		667	667	00.15
	Ores		120	120	00.03
	Stone, sand, and other like articles	5,280	98	5,378	01.25
	Salt		5,813	5,813	01.35
Products of forest.	Lumber	119,534	20,441	139,975	32.46
Manufactures.	Petroleum and other oils		9,642	9,642	02.24
	Sugar	744	3,369	4,113	00.95
	Naval stores	0	0	0	0.00
	Iron—pig and bloom	340	3,020	3,360	00.78
	Iron and steel rails	6	596	602	00.14
	Other castings and machinery	7	225	232	00.05
	Bar and sheet metal	0	900	900	00.21
	Cement, brick, and lime	198	2,760	2,738	00.64
	Agricultural implements	396	1,246	1,642	00.38
	Wagons, carriages, tools, etc	15	1,125	1,140	00.26
	Wines, liquors, and beers	256	5,844	6,100	01.41
	Household goods and furniture	1,406	1,770	3,176	00.74
Merchandise		10,164	17,316	27,480	06.37
Miscellaneous—Other commodities not mentioned above		13,347	34,848	48,195	11.17
Total tonnage—Texas		258,057	172,597	431,214	100.00
Total tonnage—entire line		See above.			

311 (70) *Instructions for Answering Questions on Opposite Page.*

There should appear on the opposite page some notation to indicate that the questions asked have not been overlooked. The word "none" may be used for a whole page; or a distinct table; or under any column heading; or against any particular item or items, where that word expresses the facts. In other cases, refer by note to this page, as for example, "see page 70," where a brief explanation should be given why specific data called for cannot be returned exactly as requested.

Under "consumption of fuel by locomotives," the ton of two thousand pounds should be used in reporting coal. In stating the total tonnage of fuel consumed, the tonnage of wood is to be estimated as follows: Hard wood, one and one-half cords to be equivalent to one ton of coal; soft wood, two cords to be equivalent to one ton of coal. In stating "average cost at distributing point," different points may be named if desired, giving the cost at each.

Explanatory Remarks.

Renewals of Rails and Ties—State of Texas.

New rails laid during year.				New ties laid during year.		
Kind.	Tons.	Weight per yard.	Average price per ton at distributing point.	Kind.	Number.	Average price at distributing point.
Iron: None				Oak	255,755	.25
Total iron				Total	255,755	.25
Steel	44	56 lbs.	34.50			
	5.50	35 lbs.	25.00			
Total steel	49.50	52.50 lbs.	33.44			

Consumption of Fuel by Locomotives—State of Texas.

Locomotives	Coal—tons.		Wood—cords.		Total fuel consumed—tons.	Miles run.	Average pounds consumed per mile.
	Anthracite.	Bituminous.	Hard.	Soft.			
Passenger		12,341	275		12,524	494,864	50.62
Freight		27,566	394		27,829	623,377	89.28
Switching		5,064	54		5,100	340,923	29.92
Construction		1,965	25		1,982	84,105	47.14
Total	None.	46,936	748	None.	47,435	1,543,269	61.48
Average cost at distributing point:							
At Texarkana		$3.33					
" Sherman		2.00					
At all points			2.00				

Endorsed on cover: Case No. 15,552. W. Texas C. C. U. S. Term No., 1168. John H. Reagan, W. P. McLean, L. L. Foster, and C. A. Culberson, appellants, *vs.* The Mercantile Trust Company, trustee, and The St. Louis Southwestern Railway Company of Texas. Filed March 31st, 1894.

Office Supreme Court U. S.
FILED.
APR 13 1894
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IN THE

Supreme Court of the United States.

No. 1168.

JOHN H. REAGAN ET AL., APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY AND THE ST. LOUIS SOUTHWESTERN RAILROAD COMPANY, APPELLEES.

APPEAL FROM THE CIRCUIT COURT FOR THE WESTERN DISTRICT OF TEXAS.

BRIEF FOR APPELLANTS.

C. A. CULBERSON,
H. C. COKE,
W. S. SIMKINS,
For Appellants.

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

No. 1168.

JOHN H. REAGAN ET AL., APPELLANTS,

vs.

THE MERCANTILE TRUST COMPANY AND THE ST. LOUIS SOUTHWESTERN RAILROAD COMPANY, APPELLEES.

STATEMENT OF THE CASE.

This case is in all respects similar to the *International*, except that, having been organized subsequent to 1879, it is not claimed that the act of February 7, 1853 constitutes a contract with the railway company, and it is alleged that under the commission rates the company did not earn operating expenses. This renders it necessary to notice in this brief the question of rates only.

I.

The St. Louis Southwestern Railroad Company, as indicated in the reports which are made parts of the bills, is a reorganized bankrupt concern. Its value is arbitrarily

fixed at the sum of $16,667,500, the aggregate of the first-mortgage bonds, the second-mortgage income bonds, and the capital stock.

The report for the year 1891 purports to show an excess of operating expenses over earnings of $30,288.89 and for the year 1892 an excess of operating expenses over earnings of $23,084.71. For the reasons given in the *Santa Fé* case, and deemed unnecessary to be repeated here, this does not show that the commission rates produced this result. This company did not make operating expenses under rates established by itself. It was constructed through a territory in Texas already sufficiently occupied, and may not be better situated for years.

R. R. Co. *vs.* R. R. Co., 47 Fed. Rep., 27.

With what small business it now commands, if the rates were such as would enable it to pay expenses and interest it would either stop transportation altogether, because of the high rates, or drive the traffic short distances by wagons to lines which parallel and compete with it. It was constructed subsequent to the *International*, the *Santa Fé*, the *Texas and Pacific*, the *Houston and Texas Central*, and the *Iron Mountain*. It is familiarly known in Texas as a "teaser" and if it ever passes beyond this interesting but unprofitable stage, even its friends will be surprised.

The rates established by the commission have greatly increased the business of this company, and it is remarkable that if the directory is intelligent and devoted to its interests any complaint should be made. The gross earnings for 1891 were $83,228.65, and the freight earnings $57,950.90. For the year 1892, when the commission rates were in opera-

tion, the gross earnings were $1,449,442.29 and the freight earnings $1,083,897.93, or the remarkable and extraordinary increase in gross earnings of $1,366,214.64 and freight earnings of $1,025,947. The operating expenses for 1892 were $1,472,527 as against $113,517.54 for the year 1891. While the increase of business was great, this increase in operating expenses is in no just proportion and shows unmistakably that the commission rates have proven beneficial, and the result would more clearly appear except for the application of the earnings to renewals and repairs.

It is submitted that the cause should be reversed with directions to dismiss the bills.

C. A. Culberson,
H. C. Coke,
W. S. Simkins,
For Appellants.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893. No. 1168.

JOHN H. REAGAN ET AL.,
Appellants,
vs.
THE MERCANTILE TRUST COMPANY, TRUSTEE, AND THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY OF TEXAS,
Appellees.

BRIEFS FOR THE TRUST COMPANY AND FOR THE RAILWAY COMPANY, APPELLEES.

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JOHN J. McCOOK,
Of Counsel for The Mercantile Trust Company.

ALEXANDER G. COCHRAN,
WINSLOW S. PIERCE,
Of Counsel for the St. Louis Southwestern Railway Company.

C. G. Burgoyne, cor. Walker and Centre Sts., N. Y.

In the Supreme Court of the United States.

OCTOBER TERM, 1893—NO. 1168.

JOHN H. REAGAN ET AL.,
Appellants,

vs.

THE MERCANTILE TRUST COMPANY, Trustee, and the ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, of Texas,
Appellees.

Brief for the Mercantile Trust Company, Trustee.

This cause has been advanced by your Honors and taken under advisement simultaneously with case No. 928, entitled John H. Reagan *et al.*, appellants, vs. The Farmers' Loan and Trust Company and the International and Great Northern Railroad Company, appellees.

The pleadings are identical with those in case No. 928, except in so far as they set forth the facts as to the amount of indebtedness of the railways of the defendant company, the effects in dollars and cents of the Commission's tariffs upon them, and such other matters

of detail as we shall hereinafter at length set forth. The bill was filed on the same day as that filed in No. 928, the pleadings were the same, the same motion for a preliminary injunction was made, heard and decided in favor of the complainant, the sume cross-bill filed, the same decree rendered, the same answer filed by the Commission; depositions were taken in like manner as in case No. 928; and months after the case had been put at issue the defendants Reagan, Foster and McLean, constituting the Railway Commission of Texas, and the defendant Charles A. Culberson, Attorney-General, elected to withdraw their answers and to substitute demurrers therefor. These demurrers were overruled. The said defendants stood upon them, and submitted the cause to the Court on the bill of complaint and demurrer thereto, which thereupon rendered a final decree in favor of the complainants.

The law applicable to the case has been fully discussed in the briefs filed by us in No. 928, to which reference is made, and to which we desire to make no additions.

THE FACTS IN THIS CASE AS SHOWN BY THE BILL AS AMENDED ARE IN SUBTANCE AS FOLLWS:*

1. The **cost of construction** and equipment of the lines of ralroad owned and operated by the railway company was $30,000 per mile of such road. The said railroad is $.572\frac{5}{10}$ miles in length. The railroad

* Under the order requiring this brief to be filed by April 13th, it is necessary to file it before the record is printed. We have, therefore, been compelled to refer to the record otherwise than by page. We trust and believe that this will not be found to be a source of much inconvenience to the Court.

and equipment was acquired at a cash expenditure of more than that amount per mile (Bill of Complaint, par. 1; Amendment thereto, par. 2).

2. The **cost of replacement or duplication** of the lines of railroad and equipment of the defendant company would be not less than $20,000 per mile *(Ib.)*.

3. The **bonds** of the defendant company aggregate the amount of $14,167,500 or at the rate of $24,746 per mile of road owned and operated by the defendant company (Bill, pars. 3, 4; Cross-Bill, pars. 1, 2).

4. The **stock** issued by the defendant railroad company and outstanding aggregates $2,500,000, or at the rate of $4,366 per mile of road owned and operated by the defendant (Cross-bill, par. 2).

5. The **stock and bonds** of the defendant company aggregate $16,667,500, or at the rate of $29,113 per mile of road owned and operated by it.

It thus appears that the entire capitalization of the railway company—stock and bonds—is less than the actual cost of its physical properties by the sum of $887 per mile.

6. The **operating expenses** of the defendant company were at the time when the Railway Commission began its work, reduced to a minimum consistent with safety and with adequate service to the company and the public. Its supplies, material and property for the operation of its road were secured at the cheapest market price and were in amount no more than was actually necessary for the purposes of operation

(Amendments to original bill and cross-bill, par. 1 Exhibits H and I). The number of its officers, employees and laborers, and the number of days in which they had worked, their total yearly compensation, and their average daily compensation, distributively and in the aggregate, are also shown (Record, Exhibits H and I). By allegations, the truth of which is conceded, and by exhibits and schedules, whose accuracy is admitted, it is shown that the operating expenses of the company were at a minimum consistent with safety and adequate service.

7. The **result of the operations** of the defendant company for the ten months ending March 31st, 1892 (Record, paragraph 2 of the cross-bill), shows gross earnings from all sources during said period of $1,296,631.23; operating expenses, taxes and other disbursements, omitting all amounts for interest upon bonds, amounting to a total of $1,292,203.99; or, in other words, that during said ten months the company earned only $4,427.34 over the actual expenses of operating, and excluding entirely from consideration the interest upon its bonded indebtedness.

(See Record, paragraph 2 of cross-bill, where a statement containing the above figures is given, but from which we have eliminated the item of interest on bonds.)

With the actual cash investment in its property in excess of its bond and stock capitalization; with its bonds bearing two-thirds the minimum rate of interest established by the laws of the State of Texas (even as reduced by recent enactment to six per cent); with its road operated as economically as possible or consistent with safety and public interest; with its earnings scarcely

sufficient to meet its operating expenses ; with its rates forced by actual commercial and competitive conditions to an amount abnormally low and unproductive—with these as the existing conditions—admitted on the record—the Railroad Commission began its work of reduction of rates ; and it concluded this work at the date of the preliminary injunction with reductions resulting in a diminution of net revenues of more than $150,000 per annum, as compared with the result of the inadequate and insufficient rates which were in existence at the time when the commission began.

While the net revenues were then just about equal to operating expenses, the reductions effected by the Commission cut off freight revenues more than 15 per cent.

A statement of the facts of this case is its most cogent and conclusive argument.

Unless this company can be compelled to operate its railways for the benefit of the community, and at less than actual cost of operation, the Commission is without power to establish any tariff which would reduce the earnings as fixed by natural and competitive conditions, and we respectfully submit that the decree of the lower Court was correct and should be affirmed.

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JOHN J. MCCOOK,
Of Counsel for Trust Company, Appellee.

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.—No. 1168.

JOHN H. REAGAN ET AL.,
Appellants,

AGAINST

THE MERCANTILE TRUST COMPANY, Trustee, and THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, of Texas,
Appellees.

Brief for The St. Louis Southwestern Railway Company, Appellee.

This cause is submitted to the Court upon the briefs and arguments filed in cause No. 928, of this Term, by us and by counsel for The Mercantile Trust Company, and also upon the short statement and brief filed by counsel for the Trust Company in this cause.

ALEX. G. COCHRAN,
WINSLOW S. PIERCE,
Counsel for the Railway Co.

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SUPREME COURT OF THE UNITED STATES.

October Term, 1893.

No. 1168.

JOHN H. REAGAN ET ALS., APPELLANTS,

versus

THE MERCANTILE TRUST COMPANY AND THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, OF TEXAS,

APPELLEES.

REPLY BRIEF FOR APPELLEES.

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JNO. J. McCOOK,
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T. H. Thomason, Print, N. O.

SUPREME COURT OF THE UNITED STATES.

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versus

THE MERCANTILE TRUST COMPANY AND THE ST. LOUIS SOUTHWESTERN RAILWAY COMPANY, OF TEXAS,

APPELLEES.

REPLY BRIEF FOR APPELLEES.

In reply to the comments of the Attorney-General on the alleged increase in the earnings of the defendant Railway Company for the year 1892, as compared with 1891, we beg to call the attention of the Court to two matters which are conclusive, to-wit:

1st. If the appellants desired to raise questions of fact, they should not have asked leave to withdraw their answers, but should have allowed the case to come before the Court upon proofs. They elected to demur and they stood upon their demurrer. Both the bill and the amended bill, and the cross-bill and the amended cross-bill specifically alleged that the effect of the commission rates was a depletion of revenues, and that depletion is given in dollars and cents. If there had been any such increase in the revenues

as the Attorney-General claims, in his brief, the complainant would have a right by appropriate evidence to explain that increase, and to show that it is perfectly consistent with the allegations of the bill that the commission rates depleted the earnings. By their demurrer appellants admitted the confiscatory character of the tariff and justified. It is now too late to shift their defense.

2d. Owing to the fact that the appeal in this cause was made returnable only on April 2d, and that it was considered desirable that this cause, together with four others of the same class, should go before the Court at one and the same time, it became necessary to print the records very hurriedly, and the counsel writing this brief has not even one of the printed records before him, but is compelled to trust to memory. He knows, however, the fact to be, and ventures the suggestion, that the same documents from which the Attorney-General takes his figures will show that the report for the year 1891, covered the one month of June only, when the Railway had just emerged from a receivership (see original bill, first three lines of paragraph nine), whilst the report for the year 1892 covered twelve months. The comparison in the brief of the appellants is therefore made between revenues of one month of 1891, and revenues of twelve months of 1892.

Respectfully submitted.

JOHN F. DILLON,
E. B. KRUTTSCHNITT,
JNO. J. McCOOK,
Of Counsel for Trust Company.
ALEXANDER G. COCHRANE,
WINSLOW S. PIERCE,
Of Counsel for Railway Company.